

**CODE OF ORDINANCES
CITY OF
BUFFALO, MINNESOTA**

Published in 2021 by Order of the City Council



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- CODE OF ORDINANCES CITY OF BUFFALO, MINNESOTA
CITY OFFICIALS

City Attorney

Susan Johnson

City Clerk

PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the City of Buffalo, Minnesota.

Source materials used in the preparation of the Code were the 1985 Code, as supplemented through May 30, 2019, and ordinances subsequently adopted by the city council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1985 Code, as supplemented, and any subsequent ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

| | |
|--------------------------------|---------|
| CHARTER | CHT:1 |
| RELATED LAWS | RL:1 |
| SPECIAL ACTS | SA:1 |
| CHARTER COMPARATIVE TABLE | CHTCT:1 |
| RELATED LAWS COMPARATIVE TABLE | RLCT:1 |

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| | |
|--------------------------------|--------|
| SPECIAL ACTS COMPARATIVE TABLE | SACT:1 |
| CODE | CD1:1 |
| CODE APPENDIX | CDA:1 |
| CODE COMPARATIVE TABLES | CCT:1 |
| STATE LAW REFERENCE TABLE | SLT:1 |
| CHARTER INDEX | CHTi:1 |
| RELATED LAWS INDEX | RLi:1 |
| SPECIAL ACTS INDEX | SAi:1 |
| CODE INDEX | CDi:1 |

Index

The index has been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the index itself which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up to date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up to date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Sandra S. Fox, Senior Code Attorney, and Nate Bruce, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Susan Johnson, City Clerk, and Alison Matthees, Assistant City Administrator, for their cooperation and assistance during the progress of the work on this publication. It is hoped that their efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the city readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the city's affairs.

Copyright

All editorial enhancements of this Code are copyrighted by Municipal Code Corporation and the City of Buffalo, Minnesota. Editorial enhancements include, but are not limited to: organization; table of contents; section catchlines; prechapter section analyses; editor's notes; cross references; state law references; numbering system; code comparative table; state law reference table; and index. Such material may not be used or reproduced for commercial purposes without the express written consent of Municipal Code Corporation and the City of Buffalo, Minnesota.

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Adopting a City Code

ORDINANCE NO.2021-6

AN ORDINANCE ENACTING A CODE OF ORDINANCES FOR THE CITY OF BUFFALO, MINNESOTA, AMENDING, RESTATING, REVISING, UPDATING, CODIFYING, AND COMPILING CERTAIN ORDINANCES OF THE CITY DEALING WITH THE SUBJECTS EMBRACED IN THE CODE OF ORDINANCES, AND PROVIDING PENALTIES FOR THE VIOLATION OF THE CODE OF ORDINANCES.

WHEREAS Minnesota Statutes §§ 415.02 and 415.021 authorize the city to cause its ordinances to be codified and printed in a book, now therefore:

The City Council of Buffalo, Minnesota ordains:

Section 1. The general ordinances of the city as amended, restated, revised, updated, codified, and compiled in book form, including penalties for the violations of various provisions thereof, are adopted and shall constitute the Code of Ordinances of the City of Buffalo. This Code of Ordinances also adopts, by reference, certain statutes and administrative rules of the State of Minnesota as named in the Code of Ordinances.

Section 2. The Code of Ordinances as adopted in Section 1 shall consist of the following titles:

1. General Provisions
2. Administration
3. Reserved
4. Alcoholic Beverages
5. Reserved
6. Animals
7. Reserved
8. Body Art and Piercing
9. Reserved
10. Buildings and Construction
11. Reserved
12. Businesses
13. Reserved
14. Emergency Management and Services
15. Reserved
16. Environment
17. Reserved
18. Fire Prevention, Protection and Control
19. Reserved

- CODE OF ORDINANCES CITY OF BUFFALO, MINNESOTA
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- 20. Health and Public Welfare (Reserved)
- 21. Reserved
- 22. Human Relations and Social Services (Reserved)
- 23. Reserved
- 24. Law Enforcement
- 25. Reserved
- 26. Nuisances
- 27. Reserved
- 28. Offenses
- 29. Reserved
- 30. Parks and Recreation
- 31. Reserved
- 32. Secondhand Goods
- 33. Reserved
- 34. Signs
- 35. Reserved
- 36. Solid Waste
- 37. Reserved
- 38. Streets, Sidewalks and Rights-of-Way
- 39. Reserved
- 40. Subdivisions, Planning and Development
- 41. Reserved
- 42. Taxation
- 43. Reserved
- 44. Tobacco Sales, Distribution and Use
- 45. Reserved
- 46. Traffic and Vehicles
- 47. Reserved
- 48. Utilities
- 49. Reserved
- 50. Zoning

Section 3. All prior ordinances pertaining to subjects treated in the Code of Ordinances shall be deemed repealed from and after the effective date of this ordinance, except as they are included and re-ordained in whole or in part

in the Code of Ordinances; provided this repeal shall not affect any offense committed or penalty incurred, or any right established prior to the effective date of this ordinance, nor shall this repeal affect the provisions of ordinances levying taxes; appropriating money; annexing or detaching territory; establishing franchises; granting special rights to certain persons; authorizing public improvements; authorizing the issuance of bonds or borrowing of money; authorizing the purchase or sale of real or personal property; granting or accepting easements, plat or dedication of land to public use; or vacating or setting the boundaries of streets or other public places; nor shall this repeal affect any other ordinance of a temporary or special nature or pertaining to subjects not contained in or covered by the Code of Ordinances. All fees established in prior ordinances shall remain in effect unless amended in this Code of Ordinances, or until an ordinance adopting a fee schedule is adopted or amended.

Section 4. This ordinance adopting the Code of Ordinances shall be a sufficient publication of any ordinance included in it and not previously published in the city's official newspaper. The city clerk shall cause a substantial quantity of the Code of Ordinances to be printed for general distribution to the public at actual cost, and shall furnish a copy of the Code of Ordinances to the County Law Library or its designated depository. The official copy of this Code of Ordinances shall be marked and be kept in the office of the city clerk.

Section 5. Additions or amendments to the Code when passed in such form as to indicate the intention of the city council to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 6. Ordinances adopted after March 1, 2021, that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to the like provision of the Code.

Section 7. The Code of Ordinances is declared to be prima facie evidence of the law of the city and shall be received in evidence as provided by Minnesota Statutes by the courts of the State of Minnesota.

Section 8. This ordinance adopting the Code of Ordinances, and the Code of Ordinances itself, shall take effect upon publication of this ordinance in the city's official newspaper.

Passed by the City Council of Buffalo, Minnesota this 20th day of September, 2021.

Teri Lachermeier, Mayor

Susan Johnson, City Clerk

Please publish in the Wright County Journal Press in the legal section on September 23, 2021.

SUPPLEMENT HISTORY TABLE

The table below allows users of this Code to quickly and accurately determine what legislation has been considered for codification in each supplement. Legislation that is of a general and permanent nature is codified in the Code Book and are considered "Includes." Legislation that is not of a general and permanent nature is not codified in the Code Book and are considered "Omits."

In addition, by adding to this table with each supplement, users of this Code of Ordinances will be able to gain a more complete picture of the Code's historical evolution.

| Ord. No. | Date Adopted | Include/Omit | Supp. No. |
|----------|--------------|--------------|-----------|
| 2021-4 | 7-19-2021 | Include | 1 |

Buffalo, Minnesota, Code of Ordinances
SUPPLEMENT HISTORY TABLE

| | | | |
|--------|------------|---------|---|
| 2021-5 | 9-20-2021 | Include | 1 |
| 2021-6 | 9-20-2021 | Include | 1 |
| 2021-7 | 9-20-2021 | Include | 1 |
| 2021-8 | 10- 4-2021 | Include | 1 |
| 2022-1 | 1-18-2022 | Include | 1 |
| 2022-2 | 5- 2-2022 | Include | 2 |
| 2022-4 | 8- 1-2022 | Omit | 2 |
| 2022-3 | 6-21-2022 | Include | 2 |
| 2022-5 | 9-19-2022 | Include | 2 |
| 2022-6 | 10- 3-2022 | Include | 2 |
| 2022-7 | 11- 7-2022 | Include | 2 |
| 2022-8 | 11- 7-2022 | Include | 2 |
| 2022-9 | 12- 5-2022 | Include | 2 |
| 2023-1 | 2- 6-2023 | Include | 2 |
| 2023-2 | 1-17-2023 | Omit | 2 |
| 2023-3 | 2-21-2023 | Omit | 2 |
| 2023-4 | 3-20-2023 | Include | 2 |
| 2023-5 | 3-20-2023 | Include | 2 |
| 2023-6 | 3-20-2023 | Include | 2 |
| 2023-8 | 3-20-2023 | Omit | 2 |

Chapter 1 GENERAL PROVISIONS¹

Sec. 1-1. How Code designated and cited; applicability.

- (a) The ordinances embraced in this and the following chapters shall constitute and be designated the Code of Ordinances, City of Buffalo, Minnesota and may be so cited. This Code may also be referred to as "this Code" or "Buffalo City Code." Section of this Code may be cited as "Buffalo City Code, sec. ____."
- (b) The provisions of this chapter shall be applicable to all the chapters, sections, subsections, paragraphs and provisions in this Code, and this Code shall apply to all persons and property within the city, and within such adjacent area as may be stated in specific provisions.

(Code 1985, §§ 1.01, 1.08)

State law reference(s)—Codification, M.S.A. § 415.021; codification as evidence, M.S.A. § 415.02.

¹State law reference(s)—Codification, M.S.A. § 415.021; codification as evidence, M.S.A. § 415.02; construction of words and phrases, M.S.A. § 645.08 et seq.; definitions of words and phrases, M.S.A. § 645.44 et seq.; definitions of misdemeanor and petty misdemeanor, M.S.A. § 609.02.

Sec. 1-2. Definitions and rules of construction.

Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases, for the purpose of every chapter, section, subdivision, paragraph and provision of this Code, shall have the following meanings and inclusions:

City. The term "city" means the City of Buffalo, Minnesota, acting by or through its duly authorized representatives.

City administrator. The term "city administrator" means the person duly appointed by the city council and acting in such capacity or his assigns.

City council or council. The term "city council" or "council" means the city council of Buffalo, Minnesota.

Common, technical words and phrases. Common words and phrases shall be construed according to the common and approved usage of the language, but technical words, technical phrases that have acquired peculiar and appropriate meanings in law shall be construed according to such meanings.

Conflicting provisions. When provisions conflict, the specific shall prevail over the general.

Conviction. The term "conviction" means a plea of guilty, a verdict of guilty by a jury, or a finding of guilty by the court, accepted and recorded by the court.

County. The term "county" means Wright County, Minnesota.

Crime. The term "crime" means conduct which is prohibited by ordinance and for which the actor may be sentenced to imprisonment or fine.

Delegation of authority. A provision that authorizes or requires a city officer or city employee to perform an act or make a decision that authorizes such officer or employee to act or make a decision through subordinates.

Ex officio member. The term "ex officio member" means a person who is not counted for the purpose of determining a quorum, and has no right to vote, but shall have the right and obligation (within his discretion) to speak to any question coming before the board, commission or other deliberative body of which he is such member.

Fee schedule. The term "fee schedule" means the official consolidated list maintained in the city clerk's office that lists rates and charges for city services as determined from time to time by the city council. The fee schedule is on file in the office of the city clerk. The city council may change and amend these fees and charges by resolution as the ordinance establishing the fee or charge provides. The city clerk shall amend the city fee schedule to reflect any changes in the charges or fees the city council approves.

Gender. Words of the male gender shall include the female and neuter, and the singular shall include the plural and the plural shall include the singular.

Intersection. The term "intersection" means the area embraced within the prolongation or connection of the lateral curblines or, if no curb, then the lateral boundary lines of the roadways or streets which join one another at, or approximately at, right angles or the area within which vehicles traveling upon different streets joining at any other angle may come in conflict.

Joint authority. Words giving a joint authority to three or more persons give such authority to a majority of such persons.

Liberal construction. All provisions shall be liberally construed so that the intent of the city council may be effectuated.

M.S.A. The abbreviation "M.S.A." means and refers to the latest edition and most current version of Minnesota Statutes Annotated.

Minn. R. The abbreviation "Minn. R." refers to the latest edition and most current version of the Minnesota administrative regulations codified as "Minnesota Rules."

Misdemeanor. The term "misdemeanor" means the crime for which a sentence of not more than 90 days, or a fine of not more than \$700.00, or both, may be imposed.

Number. Words in the singular include the plural. Words in the plural include the singular.

Officers and employees; designees. References to officers, departments, board, commissions or employees are to city officers, city departments, city boards, city commissions and city employees. Wherever an appointed public official is referred to in this Code, the reference shall include the public official or his designee.

Ordinance. The term "ordinance" means an ordinance duly adopted by the city council that is a legislative act of general and permanent nature.

Person. The term "person" means any human being, any governmental or political subdivision or public agency, any public or private corporation, any partnership, any firm, association or other organization, any limited liability company, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing or any other legal entity. Whenever the term "person" is used in any provision prescribing and imposing a penalty, the term "person" as applied to a corporation, partnership or limited liability company means the officers or partners thereof, as the case may be.

Petty misdemeanor. The term "petty misdemeanor" means an offense, which does not constitute a crime, and for which a sentence of a fine of not more than \$200.00 may be imposed.

Police officer and peace officer. The terms "police officer" and "peace officer" mean every officer, including special police, authorized to direct or regulate traffic, keep the peace, and appointed or employed for the purpose of law enforcement.

Premises. The term "premises" means any lot, piece or parcel of land within a continuous boundary whether publicly or privately owned, occupied or possessed.

Private property. The term "private property" means all property not included within the definition of "public property" or "public place."

Public property and public place. The term "public property" or "public place" means any place, property or premises dedicated to public use, owned by the city, occupied by the city as a lessee, or occupied by the city as a street by reason of an easement, including, but not limited to, streets, parks or parking lots so owned or occupied.

Resolution. The term "resolution" means a legislative act of the city council of a special or temporary character.

Roadway. The term "roadway" means that portion of a street improved, designed, or ordinarily used for vehicular travel. In the event a street includes two or more separate roadways, the term "roadway," as used herein, shall refer to any such roadway separately, but not to all such roadways collectively.

Shall, may. The term "shall" indicates a mandatory requirement, while the term "may" indicates a discretionary requirement.

State. The term "state" means the State of Minnesota.

Street. The term "street" means the entire area dedicated to public use or contained in an easement or other conveyance or grant to the city, and shall include, but not be limited to, roadways, boulevards, sidewalks, alleys, and other public property between lateral property lines in which a roadway lies.

Violate. The term "violate" includes failure to comply with.

Written or in writing. The term "written" or "in writing" means any mode of representing words and letters in the English language.

Year. The term "year" means a calendar year unless otherwise stated.

(Code 1985, §§ 1.02, 1.07, 1.10, 14.04)

Sec. 1-3. Catchlines of sections; history notes references.

- (a) The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and are not titles of such sections, or of any part of the section, nor unless expressly so provided shall they be so deemed when any such section, including the catchline, is amended or reenacted.
- (b) The history or source notes appearing in parenthesis after sections in this Code have no legal effect and only indicate legislative history. Editor's notes, cross references and state law references that appear in this Code after sections or subsections or that otherwise appear in footnote form are provided for the convenience of the user of the Code and have no legal effect.
- (c) Unless specified otherwise, all references to chapters or sections are to chapters or sections of this Code.

(Code 1985, § 1.11)

State law reference(s)—Construction of words and phrases, M.S.A. § 645.08 et seq.; definitions of words and phrases, M.S.A. § 645.44 et seq.

Sec. 1-4. Ordinances, resolutions and activities not affected by Code.

- (a) The adoption of this Code shall not repeal or otherwise affect any of the following:
 - (1) Any offense or act committed, done, or any penalty of forfeiture incurred or any contract or right established or accruing before the effective date of this Code;
 - (2) Any ordinance promising or guaranteeing the payment of money for the city or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness;
 - (3) Any resolution not mentioned in the Code and not inconsistent with it;
 - (4) Any contract or obligation assumed by the city;
 - (5) Any ordinance zoning or rezoning particular parcel of property, or accepting any plat or subdivision;
 - (6) Any right or franchise granted by the city;
 - (7) Any ordinance dedicating, naming, establishing, locating, opening, widening, paving, etc., any street or public way in the city;
 - (8) Any appropriation ordinance;
 - (9) Any administrative or personnel ordinance not mentioned in the Code and not inconsistent with it;
 - (10) Any ordinance or resolution not in conflict with this Code regulating traffic on specific streets or portions thereof or in specific areas of the city; and
 - (11) Any ordinance levying any tax not in conflict with this Code.
- (b) All such ordinances are recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

Sec. 1-5. Effect of repeal of ordinances.

Unless specifically provided otherwise, the repeal of an ordinance does not revive any repealed ordinance. The repeal or amendment of an ordinance does not affect any punishment or penalty incurred before the repeal took effect, nor does such repeal or amendment affect any suit, prosecution or proceeding pending at the time of the amendment or repeal.

Sec. 1-6. Amendments to Code.

- (a) All ordinances adopted subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of the Code and printed for inclusion in the Code. Portions of this Code repealed by subsequent ordinances may be excluded from this Code by omission from reprinted pages affected thereby.
- (b) Amendments to provisions of this Code may be made with the following language: "Section (chapter, article, division or subdivision, as appropriate) ____ of the Code of Ordinances, City of Buffalo, Minnesota, is hereby amended to read as follows:...."
- (c) If a new section, subdivision, division, article or chapter is to be added to the Code, the following language may be used: "Section (chapter, article, division or subdivision, as appropriate) ____ of the Code of Ordinances, City of Buffalo, Minnesota, is hereby created to read as follows:...."
- (d) All provisions desired to be repealed should be repealed specially by section, subdivision, division, article or chapter number, as appropriate, or by setting out the repealed provisions in full in the repealing ordinance.

Sec. 1-7. Supplementation of Code.

- (a) Supplements to this Code shall be prepared and printed whenever authorized or directed by the city. A supplement to this Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of the supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages that have become obsolete or partially obsolete. The new pages shall be so prepared that when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.
- (b) In preparing a supplement to this Code, all portions of the Code that have been repealed shall be included from the Code by the omission thereof from reprinted pages.
- (c) When preparing a supplement to this Code, the person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances and parts or ordinances included in the supplement, insofar as necessary to do so in order to embody them into a unified Code. For example, the person may:
 - (1) Arrange the material into appropriate organizational units.
 - (2) Supply appropriate catchlines, headings and titles for chapters, articles, divisions, subdivisions and sections to be included in the Code and make changes in any such catchlines, headings and titles or in any such catchlines, headings and titles already in the Code.
 - (3) Assign appropriate numbers to chapters, articles, divisions, subdivisions and sections to be added to the Code.
 - (4) Where necessary to accommodate new material, change existing numbers assigned to chapters, articles, divisions, subdivisions or sections.

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- (5) Change the words "this ordinance" or similar words to "this chapter," "this article," "this division," "this subdivision," "this section" or "sections ____ to ____" (inserting section numbers to indicate the sections of the Code that embody the substantive sections of the ordinance incorporated in the Code).
 - (6) Make other nonsubstantive changes necessary to preserve the original meaning of the ordinances inserted in the Code.

Sec. 1-8. Code does authorize that which is otherwise unlawful.

This Code does not authorize an act or omission otherwise prohibited by law.

(Code 1985, § 1.04)

Sec. 1-9. Altering Code.

It shall be unlawful to change or amend by deletion any part of this Code or to insert or delete pages or portions thereof, or to alter or tamper with this Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby.

State law reference(s)—Destruction, mutilation, alteration and falsification of public records prohibited, M.S.A. § 609.63(6).

Sec. 1-10. Severability.

- (a) If any court of competent jurisdiction invalidates any provision of this Code, then such judgment shall not affect the validity and continued enforcement of any other provision of this Code.
- (b) If any court of competent jurisdiction invalidates the application of any provision of this Code to a particular property, structure, or situation, then such judgment shall not affect the application of that provision to any other building, structure, or situation not specifically included in that judgment.
- (c) If any court of competent jurisdiction rules invalid any condition attached to an approval under this Code, then such judgment shall not affect any other conditions or requirements attached to the same approval that are not specifically included in that judgment.
- (d) No judgment of any court of competent jurisdiction shall be considered final until all appeals therefore have been exhausted.

(Code 1985, § 1.05)

Sec. 1-11. Criminal violations and penalties.

- (a) Every person violates a chapter, section, subdivision, paragraph or provision of this Code when he performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof shall be punished as for a misdemeanor, or as for a petty misdemeanor, except as otherwise stated in specific provisions herein, as set forth in the specific chapter in which the section, subdivision, paragraph or provision violated appears. Upon conviction for a crime, the actor may be convicted of either the crime charged if it is a misdemeanor, or a petty misdemeanor as an included offense necessarily proved if the misdemeanor charge were proved.
- (b) All violations this Code designates as a petty offense or petty misdemeanor shall be punishable by a fine up to \$200.00. All violations this Code designates as a misdemeanor shall be punishable by a fine of not more than \$700.00 and up to 90 days in jail.

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- (c) If this Code does not expressly provide a penalty for a Code violation, a violation of any rule or regulation adopted pursuant to this Code shall be a misdemeanor subject to the penalties under this section.
 - (d) When this Code provides a penalty or forfeiture for a violation, the penalty or forfeiture shall be for each violation.
 - (e) When a penalty or forfeiture is provided for the violation of a chapter, section, subdivision, paragraph or provision of this Code, such penalty or forfeiture shall be construed to be for each such violation.
 - (f) All fines, forfeitures and penalties recovered for the violation of any ordinance, charter, rule or regulation of the city shall be paid into the city treasury by the court or officer thereof receiving such monies. Payment shall be made in the manner, at the time, and in the proportion provided by law.

(Code 1985, §§ 1.03, 1.06, 1.09, 14.01, 14.02, 14.03, 14.05, 14.06)

Chapter 2 ADMINISTRATION²

ARTICLE I. IN GENERAL

Sec. 2-1. Violation constitutes misdemeanor.

Violations of this chapter constitute misdemeanors punishable as provided in section 1-11.

(Code 1985, § 2.99)

Sec. 2-2. City seal.

The official city seal shall be a circular disc having engraved thereupon "City of Buffalo" and such other words, figures or emblems as the council may, by resolution, designate.

(Code 1985, § 2.05)

State law reference(s)—Authority for corporate seal, M.S.A. § 412.211.

Secs. 2-3—2-20. Reserved.

ARTICLE II. CITY COUNCIL

Sec. 2-21. Composition; compensation; quorum.

- (a) The city is governed by a council organized as an optional plan council under M.S.A. § 412.191. The council is composed of the mayor and four councilmembers. A majority of all councilmembers shall constitute a quorum although a smaller number may adjourn from time to time.

²State law reference(s)—General, statutory city powers, M.S.A. § 412.211; Uniform Code of Municipal Government, M.S.A. § 412.015 et seq.; Minnesota Government Data Practices Act, M.S.A. § 13.001 et seq.; Minnesota Open Meeting Law, M.S.A. § 13D.01 et seq.; statutory cities generally, M.S.A. § 412.013 et seq.

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- (b) The annual salary of the mayor shall be \$7,500.00, and the annual salary of each councilmember shall be \$5,000.00.

(Code 1985, § 2.12)

State law reference(s)—Similar provisions, M.S.A. § 412.191.

Sec. 2-22. Meetings.

- (a) *Regular meetings.* Regular meetings of the council shall be held in the council chambers on the first and third Mondays of each month at 7:00 p.m. Special and adjourned meetings shall also be held in the council chambers. If any regular meeting falls on a holiday, then the meeting shall be held on the next business day at the same time.
- (b) *Special meetings.* The mayor or any two members of the council may call a special meeting of the council. At the special meeting, the council shall transact only that business for which notice has been provided. Notice of a special meeting shall be by writing filed with the clerk who shall then mail, email or otherwise deliver a notice of the time and place of the meeting to all councilmembers at least one day before the meeting. Where all councilmembers are present at a special meeting and take part in the proceedings, failure to give notice in the manner provided shall not invalidate the proceedings nor any action taken at the special meeting.
- (c) *Unrelated matters.* If the council discusses or acts upon matters not directly related to the emergency meeting, the minutes of the meeting shall include a specific description of such matters.
- (d) *Recessed meetings.* If a meeting is a recessed session of a previous meeting, and the date, time and place of the recessed meeting was established and announced during the previous meeting and recorded in the minutes of that meeting, then no additional public notice is necessary.
- (e) *Open meeting law.* All council meetings including special and adjourned meetings and meetings of council committees, shall be conducted in accordance with the Minnesota Open Meetings Law, M.S.A. ch. 13D.
- (f) *Presiding officer.* The mayor shall preside at all meetings of the council. In the absence of the mayor, the mayor pro-tem shall preside. In the absence of both the mayor and the mayor pro-tem, the clerk shall call the meeting to order and shall preside until the councilmembers present at the meeting choose one of their members to act temporarily as presiding officer.
- (g) *Procedure.* The presiding officer shall preserve order, enforce the rules of procedure herein prescribed, and determine without debate, subject to the final decision of the council on appeal, all questions of procedure and order. Except as otherwise provided by statute or by these rules, the proceedings of the council shall be conducted in accordance with the most recent edition of Robert's Rules of Order.
- (h) *Meetings conducted by interactive television.* A city council meeting may be conducted by interactive television if all of the following provisions are met:
- (1) At least one member of the council is physically present at the regular meeting location.
 - (2) All members must be able to hear and see each other and all discussion and testimony presented at any location at which at least one member of the council is present.
 - (3) All members of the public at the regular meeting location must be able to hear and see all discussion and testimony and all votes of all members of the council.
 - (4) Each location at which a member of the council is present must be open and accessible to the public.
- (i) *Notices and notice procedure.* Notice of meetings shall be provided as follows:

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- (1) *Notice to public.* For all special meetings, except emergency meetings or special meetings for which a notice requirement is otherwise expressly established by statute, the city clerk shall post, at least three days before the date of the meeting, a written notice of the date, time, place and purpose of the meeting in the city hall where other notices are generally posted.
 - (2) *Notice pursuant to special request.* Any person may file a written request for notice of special meetings with the city. A person filing a request for notice of special meetings may limit the request to notification of meetings concerning particular subjects, in which case the written notice provided below need be given to that person concerning special meetings involving those subjects only. Each written request shall expire December 31 of each year and must be refiled to remain effective. Prior to December 31 of each year, the city clerk shall send out notices of the refiling requirement to each person who filed during the previous year. The city clerk shall mail or otherwise deliver a written notice of special meetings, at least three days before the date of the meeting, except an emergency meeting, to each person who has filed the request therefor. As an alternative to mailing notices to persons who have filed written requests, the city may publish the notice once, at least three days before the meeting in the official newspaper.
 - (3) *Calculation of days for providing special meeting notice.* In calculating the number of days for providing notice for special meetings, the first day that the notice is given shall not be counted, but the last day shall be counted. If the last day is a Saturday, Sunday or a legal holiday, that day is omitted from the calculation and the following day is considered the last day.
 - (4) *Actual notice.* If any person receives actual notice of a special meeting at least 24 hours prior to the meeting, all notice requirements of this section are satisfied with respect to that person.
 - (5) *Exception to notice requirement for special meetings.* Notice of a special meeting may be dispensed within a situation which requires immediate emergency action. In determining what constitutes such an emergency, the council shall consider whether the situation calls for immediate action involving the protection of the public peace, health or safety.
 - (6) *Exception to notice requirements for emergency meetings.* Mailed notice to councilmembers is not required for any emergency meeting. Posted public notice is not required for an emergency meeting. After notice of an emergency meeting has been given to councilmembers by telephone or any other method, the city clerk shall make good faith efforts to provide notice of an emergency meeting by telephone or by any other method used to notify the members of the council to each news medium which has filed a written request for such notice pursuant to this section, provided such request includes the news medium's telephone number.

(Code 1985, §§ 2.02, 2.03)

State law reference(s)—Open Meetings Law, M.S.A. ch. 13D; schedule of regular meetings of public bodies, M.S.A. § 13D.04(1); notice of special meetings of public bodies, M.S.A. § 13D.04(2); regular and special council meetings, M.S.A. § 412.191.

Sec. 2-23. Agenda; claim report; minutes of meetings.

- (a) For each meeting of the city council, the administrator shall prepare and mail or deliver to each member of the city council the following:
 - (1) An agenda for upcoming council meetings;
 - (2) A claim report containing a list of all claimants who have filed verified accounts claiming payment for goods or services rendered since the last meeting's approval;
 - (3) A copy of all minutes to be considered pursuant to section 2-24; and

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- (4) Copies of such other proposals, communications, or other documents as the administrator deems necessary or proper for advance consideration by the council.
 - (b) All claims for payment must be filed at a time determined by the city administrator.
- (Code 1985, § 2.04)

Sec. 2-24. Clerk's duties with regard to minutes, ordinances, reports and resolutions.

- (a) *Approval of minutes.* The clerk shall provide a copy of the minutes of each meeting to each councilmember with the agenda of the next regular meeting. If such copies have been distributed to councilmembers in advance of the next regular meeting of the council the minutes may be approved without verbatim reading. Amendments or corrections proposed by any member of the council shall be made by the clerk, but no amendment to which objection is raised by any member shall be made without the approval of a majority of the council.
- (b) *General contents of minutes.* The clerk shall record all material matters considered by the council in the minutes. Minutes shall be summary minutes. Ordinances, resolutions, communications and claims considered by the council need not be recorded in full in the minutes if they appear in other permanent records of the clerk and can be accurately identified from the description given in the minutes. The council may in its discretion direct that any one of the above be fully set out in the minutes.
- (c) *Numbering and copies of ordinances, reports and resolutions.* All ordinances and resolutions introduced before the council shall be assigned a file number by the clerk. Copies of any proposed ordinance shall be available for inspection by the public.

Sec. 2-25. Rules of procedure; order of business; matters outside meeting scope or procedure.

- (a) Robert's Rules of Order (newly revised) shall govern all council meetings as to procedural matters not set forth in this Code. The order of business at regular meetings shall be as provided by the city council from time to time.
- (b) Matters inappropriate for consideration at a meeting, or not in the order specified by the city council, shall not be considered except with the unanimous consent of the members of the council or scheduled public hearings or bid lettings at the time stated in the notice.

(Code 1985, § 2.04)

State law reference(s)—Power of council to regulate its own proceedings, M.S.A. § 412.191.

Sec. 2-26. Council to establish city departments, board, commissions and appoint staff.

The city council may appoint employees, board members and commissioners for the city as deemed necessary for its proper management and operation.

Secs. 2-27—2-55. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES

Sec. 2-56. General composition and duties.

- (a) *Appointment.* All department heads and employees shall be appointed by the council. All appointments shall be for an indeterminate term.
- (b) *Compensation.* All wage and salary scales shall be fixed and determined by the council.
- (c) *Table of organization and responsibility.* The council may, by resolution, adopt, amend, and from time to time revise a table of organization and define lines of responsibility and authority for the efficient governmental organization of the city.
- (d) *Budgetary information.* The heads of all departments shall, prior to July 1 in each year, file with the administrator the projected financial needs of his department for the ensuing year. Such projections shall include information as to maintenance and operation of equipment, new equipment, personnel, and such other information as may be requested by the city.
- (e) *Periodic reports.* Department heads shall submit a periodic report to the council covering the work of their respective departments at intervals required by the council.

(Code 1985, § 2.30)

Sec. 2-57. Personnel rules and regulations.

The council may, by resolution, establish personnel rules setting forth the rights, duties and responsibilities of employees. Such rules may from time to time be amended.

(Code 1985, § 2.71)

Sec. 2-58. City administrator.

- (a) *Generally.* The city administrator shall be the chief administrative officer and all administrative functions of the city, as such are from time to time specifically defined by the council, shall be performed by him.
- (b) *Appointment and removal.* The city administrator shall be chosen solely on the basis of training, experience and administrative qualifications and he need not be a resident of the city at the time of appointment. The city administrator shall be appointed for an indefinite term and can only be removed by the council after a hearing and on specified grounds such as conviction of a felony, refusal to carry out the policies of the council, or failure or refusal to promptly perform his specified duties, which grounds shall be reduced to writing and served upon him a reasonable time prior to such hearing.
- (c) *Powers and duties.* Subject to city council regulations and applicable laws, the city administrator shall control and direct the administration of municipal affairs.
 - (1) The city administrator shall see that all laws, ordinances and resolutions of the city are enforced.
 - (2) The city administrator shall supervise the activities of all municipal department heads and personnel of the city in the administration of municipal policy with authority to effectively recommend their employment or removal.
 - (3) The city administrator shall attend and participate in all meetings of the city council, shall be responsible for the preparation of the city council agenda, and shall recommend to the city council such measures as may be deemed necessary for the welfare of the citizens and the efficient administration of the city. The administrator may attend board, commission, or committee meetings as desired or as directed by the city council.

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- (4) The city administrator is responsible for the preparation of the HRA agendas and may serve as the executive director.
 - (5) The city administrator shall be responsible for the preparation of the annual fiscal budget and capital improvement plan for the city council. The city administrator shall maintain financial guidelines for the city within the scope of job responsibilities, submit reports to the city council on the financial condition of municipal accounts and make sure the annual financial statement is prepared in accordance with state statutes.
 - (6) The city administrator shall handle all personnel matters for the city in conjunction with policies established by the city council. The city administrator shall recommend terms and conditions of employee labor contracts for presentation to the city council.
 - (7) The city administrator shall represent the city at official functions as directed by the city council and maintain good public relations with the citizens of the community.
 - (8) The city administrator shall act as the chief purchasing agent for the city and be responsible for making all purchases in accordance with the approved municipal budget and purchasing ordinances. The city administrator shall have the authority to sign purchase orders for routine services, equipment and supplies as stated in the city's purchasing policy. All claims resulting from orders placed by the city shall be audited for payment by the city council. The city administrator shall negotiate contracts for merchandise, materials, equipment or construction work for presentation to the city council.
 - (9) The city administrator shall coordinate municipal programs and activities as directed by the city council and shall monitor all consultant and contract work performed for the city.
 - (10) The city administrator shall work in cooperation with the city council's appointed attorney, engineer and other outside consultants.
 - (11) The city administrator shall prepare news releases and develop and discuss public relations with all concerned as required.
 - (12) The city administrator shall be informed regarding federal, state and county programs which affect the city. The city administrator shall consult with officials of both public and private agencies as may be required.
 - (13) The city administrator shall inform the city council on matters dealing with the administration of the city and prepare and submit to the city council for adoption an administrative code encompassing the details of administrative procedures.
 - (14) The city administrator shall be required to take an oath of office and shall be bonded, at city expense, through a position bond or equivalent which will indemnify the city.
 - (15) The city administrator shall supervise, maintain or coordinate with the city clerk for the following:
 - a. A minute book noting therein all proceedings of the city council.
 - b. An ordinance book to record at length all ordinances passed by the city council.
 - c. The city clerk will be custodian of the city's seal and records.
 - d. Sign council minutes, resolutions and ordinances, post and publish such notices, ordinances and resolutions as may be required.
 - e. Responsible authority for data practices compliance.
 - f. Give required notice of each regular and special election proceedings thereof, notify officials of their election appointment to office, and certify to the county auditor all appointments and the results of all city elections.

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- g. Perform such other appropriate duties as may be imposed by the administrator.
 - (16) The city administrator shall have the duties of the city treasurer.
 - (17) The city administrator shall be the compliance official for data practices compliance.
 - (18) The city administrator shall perform such other duties as may be prescribed by law or required by ordinance or resolution adopted by the city council.
 - (d) *Assistant city administrator.* In case of the city administrator's absence from the city or disability, the assistant city administrator will serve as administrator.
- (Code 1985, § 2.09)

Sec. 2-59. Finance manager.

The city council has created the position of finance manager. All bookkeeping duties of the administrator shall be delegated to the finance manager, who shall furnish a fidelity bond conditioned on the faithful exercise of his duties. In lieu of an individual bond, the council may provide for a blanket bond, furnished by a surety company authorized to transact business in the state, covering the position and duties of the finance manager. Premiums on either of such bonds shall be paid from city funds.

(Code 1985, § 2.10)

Sec. 2-60. Worker's compensation.

- (a) *Contractors.* The city shall not enter into any contract for doing public work before receiving from all other contracting parties' acceptable evidence of compliance with the worker's compensation insurance coverage requirement of state law.
- (b) *City officers.* All officers of the city elected or appointed for a regular term of office or to complete the unexpired portion of any such regular term shall be included in the definition of the term "employee," as defined in state law relating to coverage for purposes of worker's compensation entitlement.

(Code 1985, § 2.13)

Secs. 2-61—2-80. Reserved.

ARTICLE IV. BOARDS, COMMISSIONS AND SIMILAR BODIES

DIVISION 1. GENERALLY

Sec. 2-81. General procedure.

- (a) *Applicability.* Except as otherwise provided in this chapter, this article shall apply to all city boards, commissions and similar bodies.
- (b) *Appointment of members; qualifications.* All appointments to city boards, commissions and similar bodies authorized by ordinance, or resolution, shall be made by the city council and such appointment confirmed prior to expiration of the existing term. No appointed member shall be an employee of the city, but an ex officio member may be so employed.

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- (c) *Term of members.* The term of each appointee shall be established and stated at the time of his appointment, and terms of present board, commission and similar bodies members may be reestablished and changed so as to give effect to this article. New appointees shall assume office on the first day of the first month following their appointment and qualification, or on the first day of the first month following the expiration of the prior term and qualification, whichever shall occur last; provided, however, that all appointees shall hold office until their successor is appointed and qualified.
 - (d) *Vacancies in membership.* All vacancies shall be filled in the same manner as for an expired term, but the appointment shall be only for the unexpired term.
 - (e) *Compensation; expense reimbursements.* With the exception of the planning commission, all appointed board, commission and similar bodies members shall serve without remuneration, but may be reimbursed for out-of-pocket expenses incurred in the performance of their duties when such expenses have been authorized by the council before they were incurred. Planning commission members receive a per diem as established by the city council and may be reimbursed for out-of-pocket expenses incurred in the performance of their duties when such expenses have been authorized by the council before they were incurred.
 - (f) *Officers.* The chairperson and the secretary shall be chosen from and by the membership annually to serve for one year; provided, however, that no chairperson shall be elected who has not completed at least one year as a member of the board or commission.
 - (g) *Removal of members.* Any member of a board, commission or similar body may be removed by the council for misfeasance, malfeasance or non-feasance in office and his position filled as any other vacancy.
 - (h) *Meetings.* Boards, commissions and similar bodies shall hold regular meetings at a time established and approved by the council.

(Code 1985, § 2.50)

Secs. 2-82—2-105. Reserved.

DIVISION 2. COMMISSIONS

Sec. 2-106. Planning commission.

The city has established a planning commission composed of six citizen members serving staggered four-year terms. A city councilmember will be appointed as a voting member by the mayor to serve a one-year term. The commission shall have the powers and duties granted in this Code and by state law relating to planning, zoning and subdivision regulation and shall act in an advisory capacity to the council in all of such areas.

(Code 1985, § 2.51)

Secs. 2-107—2-128. Reserved.

DIVISION 3. BOARDS

Sec. 2-129. Airport advisory board.

The city has established an airport advisory board composed of seven citizen members serving staggered three-year terms. A city councilmember will be appointed as a voting member by the mayor to serve a one-year term. The board shall plan, promote and encourage the development and utilization of the municipal airport including consulting and cooperating with federal, state and other agencies in order that the city may receive the utmost cooperation, financial and otherwise, with respect to the airport.

(Code 1985, § 2.53)

Sec. 2-130. Heritage preservation advisory board.

- (a) *Established; members; terms.* The city has established a heritage preservation advisory board composed of five members appointed for three-year staggered terms. A city councilmember will be appointed as a voting member by the mayor to serve a one-year term. The chairperson of the planning commission shall be an ex officio non-voting member of the board, but such membership shall not be counted in the number of members stated.
- (b) *Purpose.* The purpose of the board shall be to identify buildings, land, areas, or districts which are determined by the board to possess particular cultural or educational value and shall promote the designation of heritage preservation sites.

(Code 1985, § 2.57)

Sec. 2-131. Library advisory board.

The council has established a library advisory board composed of seven citizen members serving staggered four-year terms. A city councilmember will be appointed as a voting member by the mayor to serve a one-year term.

Sec. 2-132. Community center advisory board.

- (a) *Establishment and composition.* The city council has established a community center advisory board which consists of no more than seven voting members serving staggered three-year terms. A city councilmember will be appointed as a voting member by the mayor to serve a one-year term.
- (b) *Advisory role to community center.* The board shall serve in an advisory capacity to the city community center program director, and the city council.

(Code 1985, § 2.58)

Sec. 2-133. Park advisory board.

- (a) *Established; membership; terms.* The city council has established a park advisory board consisting of eight citizen members who shall serve staggered three-year terms. A city councilmember will be appointed as a voting member by the mayor to serve a one-year term.
- (b) *Duties and authority.* The board shall advise, support and assist the city council regarding all land the council designates as park properties and on the council's establishment, operation and maintenance of all park and recreational facilities and activities the city controls, including parks, playgrounds, marinas, swimming pools, golf courses, ski hills, hiking, bicycle and snowmobile trails and nature preserves.

(Code 1985, § 2.59)

Sec. 2-134. Airport board of adjustment and appeals.

- (a) The city council has established the board of adjustment and appeals for airport zoning which shall exclude elected officials. The board shall be either:
 - (1) The city planning commission for requests in the corporate city limits within the boundary of an orderly annexation agreement area; or
 - (2) The county board of adjustment for other requests in the unincorporated area.
- (b) The board of adjustment and appeals shall have and exercise the following powers:
 - (1) Hear and decide appeals from any order, requirement, decision, or determination made by the administrator in the enforcement of chapter 50, article XII.
 - (2) Hear and decide special exceptions to the terms of this article upon which such board of adjustment and appeals under such regulations may be required to pass.
 - (3) Hear and decide specific variances.

(Ord. of 10-5-2010, § XII(A), (B))

Sec. 2-135. Reserved.

Editor's note(s)—Ord. No. 2022-8 , adopted Nov. 7, 2022, repealed § 2-135, which pertained to Wild Marsh advisory board and derived from Code of 2021.

Sec. 2-136. Housing and redevelopment authority board (HRA).

The housing and redevelopment authority board is a statutory organization to fulfill development and redevelopment activities, housing renewal activities, and other activities for economic betterment of the city. The HRA board is a separate legal entity. The HRA board is composed of five citizen members serving staggered five-year terms. Officers of the HRA board shall be a chairperson, a vice-chairperson, and a secretary-treasurer. The HRA board shall employ an executive director who shall have general supervision over the administration of its business and affairs, subject to the direction of the authority.

Secs. 2-137—2-154. Reserved.

ARTICLE V. FINANCE

DIVISION 1. GENERALLY

Sec. 2-155. Facsimile signatures.

The mayor and administrator are authorized to request a depository of city funds to honor an order for payment when such instrument bears a facsimile of their signature, and to charge the same to the account designated thereon or upon which it is drawn, as effectively as though it were their manually written signature. Such authority is granted only for the purpose of permitting such officers an economy of time and effort.

(Code 1985, § 2.08)

Secs. 2-156—2-178. Reserved.

DIVISION 2. FRANCHISES

Sec. 2-179. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Franchise means any special privileges granted to any person in, over, upon, or under any of the streets or public places of the city, whether such privilege has been previously or is subsequently granted by the city or state. The council may grant franchises by ordinance.

(Code 1985, § 2.74(1))

Sec. 2-180. Power of regulation reserved.

The city shall have the right and power to regulate and control the exercise by any person, of any franchise however acquired, and whether such franchise has been previously or is subsequently granted by the city or state.

(Code 1985, § 2.74(3))

Sec. 2-181. Franchise rights subject to superior rights of citizens to use public property.

Franchise rights shall always be subject to the superior right of the public to the use of streets and public places.

(Code 1985, § 2.74(2))

Sec. 2-182. When franchise is required.

Persons desiring to make any burdensome use of the streets or public places, inconsistent with the public's right in such places, or desiring the privilege of placing in, over, upon, or under any street or public place any permanent or semi-permanent fixtures for the purpose of constructing or operating railways, telegraphing, or transmitting electricity, or transporting by pneumatic tubes, or for furnishing to the city or its inhabitants or any portion thereof, transportation facilities, water, light, heat, power, gas, or any other such utility, or for any other purpose, shall be required to obtain a franchise before proceeding to make such use of the streets or public places or before proceeding to place such fixtures in such places.

(Code 1985, § 2.74(2))

Sec. 2-183. Conditions applicable to all franchises.

All conditions specified in this section shall be a part of every franchise, even though they may not be expressly contained in the franchise:

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- (1) The grantee shall be subject to and will perform on its part all the terms of this section and will comply with all pertinent provisions of this Code, as the same may from time to time be amended.
 - (2) The grantee shall in no case claim or pretend to exercise any power to fix fares, rates, and charges; but that such fares, rates, and charges shall at all times be just, fair and reasonable for the services rendered and shall in all cases be fixed and from time to time changed, unless regulated by a state agency as follows:
 - a. A reasonable rate shall be construed to be one which will, with efficient management, normally yield above all operating expenses and depreciation, a fair return upon all money invested.
 - b. If possible, maximum rates and charges shall be arrived at by direct negotiation with the council.
 - c. If direct negotiations fail to produce agreement, the council shall, not less than 30 days before the expiration of any existing rate schedule or agreement, appoint an expert as its representative, the franchisee shall likewise appoint an expert as its representative and the two of them shall appoint a third person, preferably an expert, and the three of them shall constitute a board of arbitration. The board shall report its findings as soon as possible and the rates and charges it shall agree upon by majority vote shall be legal and binding, subject only to review by a court of competent jurisdiction upon application of one of the parties.
 - (3) The council shall have the right to require reasonable extensions of any public service system from time to time, and to make such rules and regulations as may be required to secure adequate and proper service and to provide sufficient accommodations for the public.
 - (4) The grantee shall not issue any capital stock on account of the franchise or the value thereof, and that the grantee shall have no right to receive upon condemnation proceedings brought by the city to acquire the public utility exercising such franchise, any return on account of the franchise or its value.
 - (5) No sale or lease of the franchise shall be effective until the assignee or lessee shall have filed with the city an instrument, duly executed, reciting the facts of such sale or lease, accepting the terms of the franchise, and agreeing to perform all the conditions required of the grantee thereunder.
 - (6) Every grant in the franchise contained of permission for the erection of poles, masts, or other fixtures in the streets and for the attachment of wires thereto, or for the laying of tracks in, or of pipes or conduits under the streets or public places, or for the placing in the streets or other public places of any permanent or semi-permanent fixtures whatsoever, shall be subject to the conditions that the council shall have the power to require such alterations therein, or relocation or rerouting thereof, as the council may at any time deem necessary for the safety, health, or convenience of the public, and particularly that it shall have the power to require the removal of poles, masts, and other fixtures bearing wires and the placing underground of all facilities for whatsoever purpose used.
 - (7) The city has the right to enter into the franchise in accordance with state law.
 - (8) The franchisee may be obligated by the city to pay the city fees to raise revenue or defray increased costs accruing as a result of utility operations, or both, including, but not limited to, a sum of money based upon gross operating revenues or gross earnings from its operations in the city.

(Code 1985, § 2.74(4))

Sec. 2-184. Authority of council to impose different or additional conditions.

The enumeration and specification of particular matters which must be included in every franchise or renewal or extension thereof, shall not be construed as impairing the right of the city to insert in any such franchise or renewal or extension thereof such other and further conditions and restrictions as the council may

deem proper to protect the city's interests, nor shall anything contained in this section limit any right or power possessed by the city over existing franchises.

(Code 1985, § 2.74(5))

Secs. 2-185—2-206. Reserved.

ARTICLE VI. SURPLUS PROPERTY

Sec. 2-207. Designation as surplus; authority for disposal.

The administrator may, from time to time, recommend to the council that certain personal property (chattels) owned by the city is no longer needed for a municipal purpose and should be sold. By action of the council, the property shall be declared surplus, the value estimated, and the administrator authorized to dispose of the property in the manner stated herein.

(Code 1985, § 2.70(3)(A))

Sec. 2-208. Sale procedure.

- (a) *Value less than \$100.00.* The administrator may sell surplus property with a total value of less than \$100.00 through negotiated sale.
- (b) *Value between \$100.00 and \$500.00.* The administrator shall offer for public sale, to the highest bidder, surplus property with a total estimated value of from \$100.00 to \$500.00. Notice of such public sale shall be given stating time and place of sale and generally describing the property to be sold at least ten days prior to the date of sale either by publication once in the official newspaper, or by posting in a conspicuous place in the city hall at the administrator's option. Such sale shall be by auction.
- (c) *Value over \$500.00.* The administrator shall offer for public sale, to the highest bidder, surplus property with a total estimated value over \$500.00. Notice of such public sale shall be given stating time and place of sale and generally describing property to be sold at least ten days prior to the date of sale by publication once in the official newspaper. Such sale shall be to the person submitting the highest bid.
- (d) *Proceeds to be deposited in source fund.* All receipts from sales of surplus property under this section shall be placed in the source fund.

(Code 1985, § 2.70(3)(B)—(E))

Sec. 2-209. Persons who may not purchase; exception.

- (a) No employee of the city who is a member of the administrative staff, department head, a member of the council, or an advisor serving the city in a professional capacity, may be a purchaser of property under this section.
- (b) Other city employees may be purchasers if they are not directly involved in the sale, if they are the highest responsible bidder, and if at least one week's published or posted notice of sale is given.
- (c) It is unlawful for any person to be a purchaser of property under this section if such purchase is prohibited by the terms of this section.

(Code 1985, § 2.70(4))

Secs. 2-210—2-226. Reserved.

ARTICLE VII. ADMINISTRATIVE PROCEDURE AND REMEDIES

Sec. 2-227. Right to administrative appeal; request; hearing.

- (a) If any person shall be aggrieved by any administrative decision of any city official, or any board or commission or similar city body other than the city council not having within its structure an appellate procedure, such aggrieved person is entitled to a full hearing before the council upon serving a written request therefor upon the mayor and administrator at least five days prior to any regular council meeting.
- (b) The request shall contain a general statement setting forth the administrative decision to be challenged by the appellant. At such hearing, the appellant may present any evidence he deems pertinent to the appeal, but the city shall not be required to keep a verbatim record of the proceedings.
- (c) The mayor, or other officer presiding at the hearing, may, in the interest of justice or to comply with time requirements and on his own motion or the motion of the appellant, the administrator, or a member of the council, adjourn the hearing to a more convenient time or place, but such time or place shall be fixed and determined before adjournment so as to avoid the necessity for formal notice of reconvening.

(Code 1985, § 2.06)

Sec. 2-228. Rules of procedure for appeals and other hearings.

The council may adopt, by resolution, certain written rules of procedure to be followed in all administrative appeals and other hearings to be held before the council or other bodies authorized to hold hearings and determine questions therein presented. Such rules of procedure shall be effective 30 days after adoption and shall be for the purpose of establishing and maintaining order and decorum in the proceedings.

(Code 1985, § 2.07)

Sec. 2-229. Administrative penalties.

- (a) *Purpose.* The city council determines that there is a need for alternative methods of enforcing this Code. While criminal fines and penalties have been the most frequent mechanism, there are certain negative consequences for the city and the accused. The delay in the criminal justice system does not ensure prompt resolution, citizens resent being labeled criminals for violating administrative regulations, the high burden of proof and potential incarceration are not appropriate for many Code violations, and the criminal process does not always regard Code violations as important. As a result, the city council finds the use of administrative citations and imposition of civil penalties is a legitimate and necessary alternative enforcement method, which will be in addition to any other legal remedy that may be pursued for Code violations.
- (b) *Administrative offense.* An administrative offense is a violation of any section of this Code when one performs an act prohibited, or fails to act when the failure is prohibited, and is subject to the penalties set forth in this Code and the city's penalty schedule.
- (c) *Notice.* Any police officer, the building inspector, city attorney or any other person employed by the city with authority to enforce this Code shall, upon determining that there has been a violation, notify the violator, person responsible for the violation, or in the case of a vehicular violation, attach notice of the violation to

the vehicle. The notice shall state the nature, date, and time of the violation, the name of the official issuing the notice, the amount of the scheduled initial penalty and any applicable charges.

- (d) *Payment.* Once a notice is given, the person responsible for the violation shall, within seven days after the notice is issued, pay the penalty amount to the city administrator in person or by mail, and payment shall be an admission of the violation. A late charge shall be imposed for each seven days the penalty remains unpaid after the first seven-day period.
- (e) *Hearing officer.* The city council shall be the hearing officer authorized to hear or determine a cause of controversy under this section. The hearing officer is not a judicial officer but is a public officer, as defined by M.S.A. § 609.415 and is subject to state law relating to public officers.
- (f) *Hearing.* Any person contesting an administrative offense under this section may request, within seven days after the notice is issued, to be heard by the hearing officer who shall hear and determine the grievance. Upon receiving a request for a hearing, the hearing officer shall set a hearing date and provide a written notice of the hearing at least five days in advance, unless the parties accept a shorter time period. The hearing officer shall have authority to impose a penalty, dismiss the violation for cause, and reduce or waive the penalty upon the terms and conditions the hearing officer determines. The hearing officer must state the disposition reasons in writing. If the hearing officer sustains the violation, the violator shall pay the penalty imposed or sign an agreement to pay upon the terms and conditions set forth by the hearing officer.
- (g) *Failure to pay.* If a violator fails to pay a penalty imposed by this section, or as agreed upon following hearing before the hearing officer, the city may bring a misdemeanor or petty misdemeanor charge against the alleged violator according to this Code and applicable law. If the violator pays the penalty, or if the hearing officer finds the individual not to have committed the administrative offense, the city shall not bring a criminal charge for the same violation.
- (h) *Disposition of penalties.* All penalties collected under this section shall be paid over to the city administrator, who shall deposit the penalty in the city's general fund and issue a receipt.
- (i) *Scheduled penalties.* Penalties shall be imposed for violating administrative offenses according to a penalty schedule the city council establishes periodically by resolution.
- (j) *Appeal.* An aggrieved party may obtain judicial review of the hearing officer's decision according to state law.
- (k) *Option to withdraw.* The procedures are intended to be voluntary on the part of those who have been charged with administrative offenses. At any time before paying the administrative penalty as is provided in this article, the individual may withdraw from participation in the procedures whereupon the city may bring criminal charges according to this Code and state law.

(Code 1985, § 14.07)

State law reference(s)—Definition of misdemeanor and petty misdemeanor, M.S.A. § 609.02; maximum penalty for ordinance violations, M.S.A. §§ 412.231, 609.034.

Chapter 4 ALCOHOLIC BEVERAGES³

ARTICLE I. IN GENERAL

³State law reference(s)—Liquor, M.S.A. § 340A.401; local restrictions authorized, M.S.A. § 340A.509; local option election, M.S.A. § 340A.416; municipal liquor stores, M.S.A. § 340A.601.

Sec. 4-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic beverage means any beverage containing more than one-half of one percent alcohol by volume, including, but not limited to, malt liquor, wine, and liquor as defined in this section.

Applicant means any person making an application for a license under this chapter.

Application means a form with blanks or spaces thereon, to be filled in and completed by the applicant as his request for a license, furnished by the city and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

Brewer means a person who manufactures malt liquor for sale.

Brewer taproom means a brewer licensed for on-sale of malt liquor produced by a license brewer for consumption on the premises of or adjacent to one brewery location owned by the brewer subject to the restrictions set forth in M.S.A. § 340A.26.

Brewpub means a brewer who also holds one or more retail on-sale licenses and who manufactures fewer than 3,500 barrels of malt liquor in a year, at any one licensed premises, the entire production of which is solely for consumption on tap on any licensed premises owned by the brewer, or for off-sale from those licensed premises as permitted in M.S.A. § 340A.24(2).

Club means an incorporated organization organized under the laws of the state for civic, fraternal, social, or business purposes, for intellectual improvement, for the promotion of sports, or a congressionally chartered veterans' organization, which:

- (1) Has more than 30 members.
- (2) Has owned or rented a building or space in a building for more than one year that is suitable and adequate for the accommodation of its members.
- (3) Is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose.

No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body of the club.

Commissioner means the state commissioner of public safety.

Growler means a 64-ounce or 750 milliliter container of malt liquor.

Hotel means an establishment where food and lodging are regularly furnished to transients and which has a resident proprietor or manager, a dining room with a total minimum floor area of 900 square feet serving the general public at tables and having facilities for seating at least 75 guests at one time, and at least ten guest rooms.

Intoxicating liquor means ethyl alcohol, distilled, fermented, spirituous, vinous, and malt beverages containing more than 3.2 percent of alcohol by weight.

Intoxicating malt liquor means any malt liquor, ale, or other beverage made from malt by fermentation which contains more than 3.2 percent of alcohol by weight.

License means a document, issued by the city, to an applicant permitting him to carry on and transact the business stated therein.

License fee means the money paid to the city pursuant to an application and prior to issuance of a license to transact and carry on the business stated therein.

Licensed premises means the premises described in the issued license. In the case of a restaurant or a club licensed for on-sales of alcoholic beverages and located on a golf course, the term "licensed premises" means the entire golf course except for areas where motor vehicles are regularly parked or operated.

Licensee means an applicant who, pursuant to his approved application, holds a valid, current, unexpired license, which has neither been revoked nor is then under suspension, from the city for carrying on the business stated therein.

Liquor means ethyl alcohol and distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2 percent of alcohol by weight. The term "liquor" includes so-called wine coolers and malt coolers with the alcoholic content limits stated herein.

Malt liquor means any ale or other beverage made from malt by fermentation and containing not less than one-half of one percent alcohol by volume.

Manufacturer means every person who, by any process of manufacture, fermenting, brewing, distilling, refining, rectifying, blending, or by the combination of different materials, prepares or produces alcoholic beverages for sale.

Minor means any natural person who has not attained the age of 21 years.

Off-sale means the sale of alcoholic beverages in original packages for consumption off the licensed premises only.

On-sale means the sale of alcoholic beverages for consumption on the licensed premises only.

Package and *original package* means any container or receptacle holding alcoholic beverages, which container or receptacle is corked, capped or sealed by a manufacturer or wholesaler.

Restaurant means an establishment, other than a hotel, under the control of a single proprietor or manager, where meals are regularly prepared on the premises and served at tables to the general public having seating capacity for at least 25 guests at any one time. Such restaurant establishments must be compliant with all state and local building, fire, food and health codes.

Statutory definitions set forth in M.S.A. § 340A.101, as amended, shall apply to any terms not otherwise defined herein.

Sale, sell and *sold* mean all barters and all manners or means of furnishing alcoholic beverages to persons, including such furnishing in violation or evasion of law.

Small brewer off-sale means a brewer licensed under M.S.A. § 340A.28 for off-sale of malt at its licensed premises liquor that has been produced and packaged by the brewer.

Wholesaler means any person engaged in the business of selling alcoholic beverages to a licensee from a stock maintained in a warehouse.

Wine means the product made from the normal alcoholic fermentation of grapes, including still wine, sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake, in each instance containing not less than one-half of one percent nor more than 24 percent alcohol by volume for nonindustrial use. The term "wine" does not include distilled spirits, as defined in M.S.A. § 340A.101.

(Code 1985, § 5.01; Ord. No. 2022-5 , 9-19-2022)

State law reference(s)—Similar definitions, M.S.A. § 340A.101.

Sec. 4-2. Municipal dispensary.

- (a) *Established.* A municipal dispensary is established to be operated within the city for the sale of alcoholic beverages. Such dispensary shall be at such place or places as the council shall determine and may be either leased or owned by the city. It shall be in the charge of a person known as the manager who shall have such assistants as may be necessary. All employees, including the manager, shall hold their positions at the discretion of the council.
- (b) *Dispensary fund.* A liquor dispensary fund is created into which all revenues received from the operation of the dispensary shall be paid, and from which all operating expenses shall be paid. Any surplus accumulating in this fund may, from time to time, be transferred by resolution of the council and expended at the council's discretion.

(Code 1985, § 5.80)

State law reference(s)—Municipal liquor stores, M.S.A. § 340A.601.

Sec. 4-3. Fees.

- (a) All fees imposed or authorized under this chapter shall be in the amount provided in the city fee schedule, including, but not by way of limitation, license fees and investigation and administration fees.
- (b) Fees under this chapter may, from time to time, be amended by the council by resolution; provided, however, that before any such fee shall be increased, a 30-day notice shall be mailed to all affected licensees and a hearing held thereon.
- (c) For the purpose of fixing such fees, the council may categorize and classify, provided that such categorization and classification shall be included in the resolution authorized by this section.

(Code 1985, § 5.12)

State law reference(s)—Retail license fees, M.S.A. § 340A.408.

Sec. 4-4. Possession on and in public property; consumption in public; exceptions.

- (a) *City parks and street; public and private parking lots.* It is unlawful for any person to consume, or possess in an unsealed container, any alcoholic beverage in any of the following places and circumstances:
 - (1) City parks, except that consumption and possession of malt liquor shall be permitted in city parks in a quantity (not exceeding seven gallons) for individual or group consumption only;
 - (2) Other public property, including city streets and parking lots; and
 - (3) Private parking lots to which the public has access.
- (b) *Unsealed trunk containers.* This section shall not apply to the possession of an unsealed container in a motor vehicle when the container is kept in the trunk of such vehicle if it is equipped with a trunk or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. For the purpose of this section, a utility or glove compartment shall be deemed to be within the area occupied by the driver or passengers.
- (c) *Exception for Buffalo Days and events sponsored by the City of Buffalo or Buffalo Chamber of Commerce.* A liquor license may be issued to the chamber of commerce to sell liquor for the Buffalo Days Celebration or other events sponsored by the City of Buffalo or Chamber of Commerce, subject to the following:

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- (1) The licensee may be required to hire an off-duty police officer approved by the police department to provide security and crowd control on the licensed premises during the hours of sale.
 - (2) The licensee must provide proof of financial responsibility as set forth in section 4-50, and the city will be named as an insured during the license period for sales at the Buffalo Days Street Dance.
- (d) *Public schools; exceptions.* It is unlawful for any person to introduce upon, or have in his possession upon, or in any public elementary or secondary school grounds or buildings any alcoholic beverages, except for experiments in laboratories and except for those persons or organizations who have been issued temporary licenses to sell malt liquor, and for any person to possess malt liquor as a result of a purchase from those organizations holding temporary licenses.

(Code 1985, §§ 5.16, 5.17; Ord. No. 2022-3 , 6-21-2022)

Sec. 4-5. Prohibited acts generally.

It is unlawful in the city for any:

- (1) Person to knowingly induce another to make an illegal sale or purchase of an alcoholic beverage.
- (2) Licensee to sell or serve an alcoholic beverage to any person who is obviously intoxicated.
- (3) Licensee to fail, where doubt could exist, to require adequate proof of age of a person upon licensed premises.
- (4) Licensee to sell an alcoholic beverage on any day, or during any hour, when such sales are not permitted by law.
- (5) Licensee to allow consumption of an alcoholic beverage on licensed premises on any day, or during any hour, when such consumption is not permitted by law.
- (6) Person to purchase an alcoholic beverage on any day, or during any hour, when such sales are not permitted by law.

(Code 1985, § 5.18)

State law reference(s)—Sales to obviously intoxicated persons prohibited, M.S.A. § 340A.502; illegal acts regarding alcoholic beverages and persons under the age of 21 years, M.S.A. § 340A.503.

Sec. 4-6. Violations constitute misdemeanors.

Violations of this chapter constitute a misdemeanor except as otherwise stated in specific provisions hereof.

(Code 1985, § 5.99)

Secs. 4-7—4-30. Reserved.

ARTICLE II. LICENSES

DIVISION 1. GENERALLY⁴

Sec. 4-31. Required.

It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of alcoholic beverages, as part of a commercial transaction, without a license therefor from the city.

State law reference(s)—License required, M.S.A. § 340A.401.

Sec. 4-32. Application; inspection and investigation.

All applications shall be made at the office of the city clerk upon forms prescribed by the city, or if by the commissioner, then together with such additional information as the council may desire. Information required may vary with the type of business organization making application. All questions asked or information required by the application forms shall be answered fully and completely by the applicant. Before an application is submitted to the city council for review:

- (1) The city fire chief or his designee shall inspect the proposed business premises to ensure compliance with this chapter and city and state building, fire, health and safety codes.
- (2) The city police chief or his designee shall conduct a background investigation with regard to the applicant to ensure that the applicant qualifies for licensure pursuant to this chapter and state law. An additional or more extensive investigation may be ordered by the city council, as provided in this chapter.

(Code 1985, § 5.02(1))

Sec. 4-33. False statements.

It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in such application, or any willful omission to state any information called for on such application form shall, upon discovery of such falsehood, work an automatic refusal of license, or if already issued, shall render any license issued pursuant thereto void and of no effect to protect the applicant from prosecution for violation of this chapter, or any part thereof.

(Code 1985, § 5.02(2))

⁴State law reference(s)—Retail licenses, M.S.A. § 340A.401 et seq.; license restrictions generally, M.S.A. §§ 340A.410, 340A.412, 340A.413.

Sec. 4-34. Corporate applicants and licensees to disclose ownership interest.

- (a) A corporate applicant, at the time of application, shall furnish the city with a list of all persons that have an interest in such corporation and the extent of such interest. The list shall name all shareholders and show the number of shares held by each, either individually or beneficially for others.
- (b) It is the duty of each corporate licensee to notify the administrator in writing of any change in legal ownership, or beneficial interest in such corporation or in such shares. Any change in the ownership or beneficial interest in the shares entitled to be voted at a meeting of the shareholders of a corporate licensee, which results in the change of voting control of the corporation by the persons owning the shares therein, shall be deemed equivalent to a transfer of the license issued to the corporation, and any such license shall be revoked 30 days after any such change in ownership or beneficial interest of shares unless the council has been notified of the change in writing and has approved it by appropriate action.
- (c) The council, or any officer of the city designated by it, may at any reasonable time examine the stock transfer records and minute books of any corporate licensee in order to verify and identify the shareholders, and the council or its designated officer may examine the business records of any other licensee to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business.
- (d) The council may revoke any license issued upon its determination that a change of ownership of shares in a corporate licensee or any change of ownership of any interest in the business of any other licensee has actually resulted in the change of control of the licensed business so as materially to affect the integrity and character of its management and its operation, but no such action shall be taken until after a hearing by the council on notice to the licensee.

(Code 1985, § 5.02(4)(H))

Sec. 4-35. Fees.

- (a) At the time of the initial application, or upon application for a transfer of an existing license, an applicant for a license under this article shall pay an application and investigation fee, not refundable, to cover the costs of the city in processing the application and the investigation thereof; provided, however, that no such fee shall be required of an applicant for a temporary malt liquor license.
- (b) Should the council determine that a comprehensive background investigation of an applicant for an on-sale liquor license is necessary, then the applicant shall pay to the city the actual cost thereof.
- (c) If the council determines that a comprehensive background and financial investigation of the applicant is necessary, the city may conduct the investigation itself or contract with an outside person, agency or organization for the investigation.
- (d) No license shall be issued, transferred or renewed if to do so may endanger the public health, safety or welfare.

(Code 1985, § 5.02(3))

Sec. 4-36. Persons disqualified.

No license under this article may be issued to a person who:

- (1) Is not a citizen of the United States or a resident alien;

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- (2) Within five years of the license application has been convicted of a willful violation of a federal or state law, or local ordinance governing the manufacture, sale, distribution, or possession for sale or distribution, of alcoholic beverages;
 - (3) Has had an alcoholic beverage license revoked within five years of the license application, or to any person who at the time of the violation owns any interest, whether as a holder of more than five percent of the capital stock of a corporate licensee, as a partner or otherwise, in the premises or in the business conducted thereon, or to a corporation, partnership, association, enterprise, business, or firm in which any such person is in any manner interested;
 - (4) Is under the age of 21 years;
 - (5) Is not of good moral character and repute; or
 - (6) Holds a license from the commissioner as a manufacturer, brewer or wholesaler and who may have a direct or indirect interest, in whole or in part, in a business holding an alcoholic beverage license from the city.

(Code 1985, § 5.02(8))

State law reference(s)—Persons eligible for alcoholic beverage licenses, M.S.A. § 340A.402.

Sec. 4-37. Grant or denial; refund of fee.

- (a) The council may approve any application for the period of the remainder of the then current license year or for the entire ensuing license year. Alternatively, the council may, in its sole discretion and for any reasonable cause, refuse to grant any application.
- (b) Prior to consideration of any application for a license, the applicant shall pay the license fee, and if applicable, pay the nonrefundable investigation fee. Upon rejection of any application for a license, or upon withdrawal of an application before approval of the issuance by the council, the license fee shall be refunded to the applicant. Failure to pay any portion of a fee when due shall be cause for revocation.

(Code 1985, § 5.02(4)(B), (F))

Sec. 4-38. Hearing upon denial of application.

In the event of denial of any application under this article, the applicant may request a public hearing before the council pursuant to notice to the applicant and the public. Opportunity shall be given all persons to be heard for or against granting the application and issuing the license.

(Code 1985, § 5.02(4)(A))

Sec. 4-39. Issuance; term; fee proration.

If an application is approved, the clerk shall forthwith issue a license pursuant thereto in the form prescribed by the city or the commissioner and upon payment of the license fee. All licenses shall be on a calendar year basis and shall expire on December 31 of each year unless otherwise specified herein. For licenses issued and which are to become effective other than on the first day of the licensed year, the fee to be paid with the application shall be a pro rata share of the annual license fee.

(Code 1985, § 5.02(4)(C))

Sec. 4-40. Fee refund after issuance.

In the event that during the license year the licensed premises shall be destroyed or so damaged by fire, or otherwise, that the licensee shall cease to carry on the licensed business, or in case the business of the licensee shall cease by reason of his illness or death, or if it shall become unlawful for the licensee to carry on the licensed business under his license, except when such license is revoked, the city shall, upon notification of the happening of any such event, refund to the licensee or to his estate such part of the license fee paid by him as corresponds to the time such license had yet to run. In the event of death of the licensee, his personal representative is authorized to continue operation of the business for not more than ninety days after the death of such licensee.

(Code 1985, § 5.02(4)(D))

Sec. 4-41. Multiple locations under single owner prohibited; limitation on ownership.

No person shall be granted malt liquor, liquor or wine licenses at more than one location. For the purpose of this section, any person owning an interest of five percent, or more, of the entity to which the license is issued shall be deemed to be a licensee.

(Code 1985, § 5.05)

Sec. 4-42. License valid only on licensed premises.

Licenses shall be valid only at one location and on the premises therein described. Unless expressly stated therein, a license issued under the provisions of this article shall be valid only in the compact and contiguous building or structure situated on the premises described in the license, and all transactions relating to a sale under such license must take place within such building or structure.

(Code 1985, §§ 5.02(4)(C), 5.07)

Sec. 4-43. Transfer.

- (a) A license shall be transferable between persons upon consent of the council and payment of an investigation fee, if any. No license shall be transferable to a different location without prior consent of the council and payment of the fee for a duplicate license. It is unlawful to make any transfer in violation of this section.
- (b) No license under this article may be issued, transferred, or renewed if the results of any investigation show, to the satisfaction of the council, that such issuance, transfer, or renewal would not be in the public interest.

(Code 1985, § 5.02(4)(E), (I))

Sec. 4-44. Revocation and suspension.

- (a) The council shall revoke or suspend, for a period not to exceed 60 days, a license granted under this article and/or impose a civil fine not to exceed \$2,000.00 for each violation, on a finding that the licensee has failed to comply with a statute, regulation or provision of this Code relating to alcoholic beverages.
- (b) The council shall revoke the license upon conviction of any licensee or agent or employee of a licensee for violating any law relating to the sale or possession of malt liquor, wine or liquor upon premises of the licensee, or if such revocation is mandatory by statute. If it shall be made to appear at the hearing thereon that such violation was not willful, the council may order suspension; provided, however, that revocation shall be ordered upon the third such violation or offense.

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- (c) No suspension or revocation shall take effect until the licensee has been afforded an opportunity for a hearing before the council, a committee of the council, or a hearing under state administrative procedures regulations, as may be determined by the council in action calling the hearing. Such hearing shall be called by the council upon written notice to the licensee served in person or by certified mail not less than 15, nor more than 30, days prior to the hearing date, stating the time, place and purpose thereof.
- (d) As additional restrictions or regulations on licensees under this article, and in addition to grounds for revocation or suspension stated in this Code or statutes, the following shall also be grounds for such action:
- (1) The licensee suffered or permitted illegal acts upon licensed premises unrelated to the sale of malt liquor, wine or liquor;
 - (2) The licensee had knowledge of such illegal acts upon licensed premises, but failed to report the same to police;
 - (3) The licensee failed or refused to cooperate fully with police in investigating such alleged illegal acts upon licensed premises; or
 - (4) The activities of the licensee created a serious danger to public health, safety, or welfare.

(Code 1985, § 5.02(4)(G))

Sec. 4-45. Duplicate licenses.

Duplicates of all original licenses under this article may be issued by the city administrator without action by the council, upon licensee's affidavit that the original has been lost, and upon payment of a fee in the amount provided in the city fee schedule for issuance of the duplicate. All duplicate licenses shall be clearly marked duplicate.

(Code 1985, § 5.02(5))

Sec. 4-46. Posting.

All licensees shall conspicuously post their licenses in their places of business.

(Code 1985, § 5.02(6))

Sec. 4-47. Renewal of licenses.

Applications for renewal of all licenses under this article shall be made at least 60 days prior to the date of expiration of the license and shall contain such information as is required by the city. The time requirement may be waived by the council for good and sufficient cause.

(Code 1985, § 5.03)

Sec. 4-48. Delinquent taxes and charges.

No license under this article shall be granted for operation on any premises upon which taxes, assessments, or installments thereof, or other financial claims of the city, are owed and are delinquent and unpaid.

(Code 1985, § 5.04)

Sec. 4-49. Conditional licenses.

Notwithstanding any provision of law to the contrary, the council may, upon a finding of the necessity therefor, place such special conditions and restrictions, in addition to those stated in this article, upon any license as it, in its discretion, may deem reasonable and justified.

(Code 1985, § 5.06)

Sec. 4-50. Financial responsibility of licensees.

- (a) *Required.* No alcoholic beverage license shall be issued or renewed unless and until the applicant has provided proof of financial responsibility, imposed by statute, by one of the following methods:
- (1) *Insurance.* Filing with the city a certificate that there is in effect an insurance policy or pool providing minimum coverages of:
 - a. \$50,000.00 because of bodily injury to any one person in any one occurrence and, subject to the limit for one person, in the amount of \$100,000.00 because of bodily injury to two or more persons in any one occurrence;
 - b. \$10,000.00 because of injury to or destruction of property of others in any one occurrence;
 - c. \$50,000.00 for loss of means of support of any one person in any one occurrence, and, subject to the limit for one person, \$100,000.00 for loss of means of support of two or more persons in any one occurrence; and
 - d. An annual aggregate of \$300,000.00 may be included in the insurance coverage.
 - (2) *Bond.* Submitting proof of a bond of a surety company with minimum coverages as provided in subsection (a)(1) of this section.
 - (3) *State treasurer's certificate.* Submitting a certificate of the state treasurer that the licensee has deposited with him \$100,000.00 in cash or securities which may legally be purchased by savings banks or for trust funds having a market value of \$100,000.00.
- (b) *Exception for certain on-sale malt liquor licensees.* This section does not apply to:
- (1) On-sale 3.2 percent malt liquor licenses with sales of less than \$25,000 of 3.2 percent malt liquor for the preceding year;
 - (2) Off-sale 3.2 percent malt liquor licenses with sales of less than \$50,000 of 3.2 percent malt liquor for the preceding year;
 - (3) On-sale wine licenses with sales of less than \$25,000 for wine for the preceding year;
 - (4) Holders of temporary wine licenses issued under law; or
 - (5) Wholesalers who donate wine to an organization for a wine tasting conducted under M.S.A. § 340A.418 or 340A.419.
- (c) *Documents submitted to commissioner.* All proofs of financial responsibility and exemption affidavits filed with the city under this section shall be submitted by the city to the commissioner.
- (d) *Filing of insurance certificate; effect of termination of coverage.* Whenever an insurance certificate is required by this article, the applicant shall file with the clerk a certificate of insurance showing that the limits are at least as high as required, that coverage is effective for at least the license term approved, and that

such insurance will not be cancelled or terminated without 30 days' written notice served upon the clerk. Cancellation or termination of such coverage shall be grounds for license revocation.

(Code 1985, §§ 5.13, 5.14)

State law reference(s)—Insurance certificates, M.S.A. § 340A.409.

Sec. 4-51. Conduct on licensed premises; licensee to maintain orderly premises.

Except as herein provided, every licensee under this article shall be responsible for the conduct of his place of business and shall maintain conditions of sobriety and order therein.

(Code 1985, § 5.08)

Sec. 4-52. Responsibility of licensee for acts of employee.

Every licensee is responsible for the conduct in the licensed establishment and any sale of alcoholic beverage by any employee authorized to sell alcoholic beverages in the establishment is the act of the licensee for the purposes of all provisions of this chapter except those derived from M.S.A. §§ 340A.701, 340A.702, and 340A.703.

(Code 1985, § 5.09)

State law reference(s)—Responsibility of licensee, M.S.A. § 340A.501.

Sec. 4-53. Inspections.

All premises licensed under this article shall be open to inspection by any police officer to determine whether or not this chapter and all other laws are being observed. All persons, as a condition to being issued such license, consent to such inspection by such officers and without a warrant for searches or seizures. It is unlawful for any licensee, or agent or employee of a licensee, to hinder or prevent a police officer from making such inspection.

(Code 1985, § 5.10)

State law reference(s)—Similar provision, M.S.A. § 340A.907.

Sec. 4-54. Restrictions regarding minors.

- (a) *Consumption.* It is unlawful for any licensee to permit any minor to consume alcoholic beverages on licensed premises, and for a minor to consume alcoholic beverages except in the household of the minor's parent or guardian, and then only with the consent of such parent or guardian.
- (b) *Purchasing.* It is unlawful for any person to sell, barter, furnish, or give alcoholic beverages to a minor unless such person is the parent or guardian of the minor, and then only for consumption in the household of such parent or guardian. It is also unlawful for a minor to purchase or attempt to purchase any alcoholic beverage or for a person to induce a minor to purchase or procure any alcoholic beverage.
- (c) *Possession.* It is unlawful for a minor to possess any alcoholic beverage with the intent to consume it at a place other than the household of the minor's parent or guardian. Possession of an alcoholic beverage by a minor at a place other than the household of the parent or guardian is prima facie evidence of intent to consume it at a place other than the household of his parent or guardian.
- (d) *Entering licensed premises.* It is unlawful for any minor to enter a premises licensed under this article, or the municipal liquor store for the purpose of purchasing or consuming any alcoholic beverage. It is unlawful for a

licensee to permit a person under the age of 18 years to enter licensed premises unless attending a social event at which alcoholic beverages are not served or in the company of a parent or guardian.

- (e) *Exception to entry restriction for certain purposes.* It is not unlawful for a person who has attained the age of 18 years to enter licensed premises to perform work for the establishment, including the serving of alcoholic beverages unless otherwise prohibited by statute, to consume meals, or to attend social functions that are held in a portion of the establishment where liquor is not sold.
- (f) *Misrepresentation of age.* It is unlawful for a minor to misrepresent his age for the purpose of purchasing an alcoholic beverage.
- (g) *Proof of age.* Proof of age for purchasing or consuming alcoholic beverages can be established only by a valid driver's license or identification card issued by this or another state, or a province of Canada, and including the photograph and date of birth of the licensed person; or by a valid military identification card issued by the United States Department of Defense; or in the case of a foreign national from a nation other than Canada, by a valid passport.

(Code 1985, § 5.11)

State law reference(s)—Similar provisions, M.S.A. § 340A.503.

Sec. 4-55. Failure to observe and comply with closing hours.

- (a) *Consumption.* It is unlawful for any person to consume, or any licensee to permit consumption of, alcoholic beverages on licensed premises more than 30 minutes after the hour when a sale thereof can legally be made.
- (b) *Closing.* It is unlawful for any person, other than a licensee or his bona fide employee actually engaged in the performance of his duties, to be on premises licensed under this article more than 30 minutes after the legal time for making licensed sales, unless the licensed establishment is open to the public for serving food.

(Code 1985, § 5.15)

Secs. 4-56—4-83. Reserved.

DIVISION 2. LIQUOR LICENSES

Sec. 4-84. Required; qualified applicants.

- (a) It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of liquor, as part of a commercial transaction, without a license therefor from the city. This section shall not apply to:
 - (1) Such potable liquors as are intended for therapeutic purposes and not as a beverage;
 - (2) Industrial alcohol and its compounds not prepared or used for beverage purposes;
 - (3) Wine in the possession of a person duly licensed under this division as an on-sale wine licensee;
 - (4) Sales by manufacturers to wholesalers duly licensed as such by the commissioner; or
 - (5) Sales by wholesalers to persons holding liquor licenses from the city.

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- (b) The city may issue on-sale liquor licenses to hotels, restaurants, bowling centers and clubs (with the permission of the commissioner); provided, however, that liquor sales will be made only to members and bona fide guests.
 - (c) A license may not be issued to a person in connection with the premises of another to whom a license could not be issued under the provisions of this chapter. This section does not prevent the granting of a license to a proper lessee because the person has leased the premises of a minor, a non-citizen who is not a resident alien, or a person who has been convicted of a crime other than a violation of this chapter.
 - (d) Any person licensed to sell liquor on-sale shall not be required to obtain an on-sale malt liquor license and may sell malt liquor on-sale without an additional license.

(Code 1985, § 5.50)

State law reference(s)—Retail licenses, M.S.A. § 340A.401 et seq.

Sec. 4-85. Sunday sales.

- (a) *When required.* The electorate of the city having authorized the same at a general or special election, a Sunday on-sale liquor license may be issued to hotels, restaurants, clubs, or bowling centers, in conjunction with the sale of food, which have on-sale liquor licenses and which also have seating capacity for not less than 30 guests at one time. Prior to issuance of such license, the applicant shall provide the city with proof of financial responsibility for Sunday sales.
- (b) *Sunday hours of sale.* The hours of sale shall be those set by M.S.A. § 340A.504, provided that the licensee is in conformance with the Minnesota Clean Indoor Air Act, M.S.A. ch. 144.
- (c) *Unlawful acts.* It is unlawful to sell liquor on Sunday unless such sales are licensed in accordance with this section, made in conjunction with the sale of food, and completed during hours of permitted sales.

(Code 1985, § 5.51)

State law reference(s)—Authority of municipalities to limit sales hours, M.S.A. § 340A.504.

Sec. 4-86. Hours and days of liquor sales other than Sunday.

The hours and days of on-sale and off-sale of intoxicating liquor on days other than Sunday shall be those set by M.S.A. § 340A.504.

(Code 1985, § 5.54)

State law reference(s)—Authority of municipalities to limit sales hours, M.S.A. § 340A.504.

Sec. 4-87. Temporary on-sale liquor license.

- (a) *License authorized.* Notwithstanding any provision of this Code to the contrary, the council may issue a license for the temporary on-sale of liquor in connection with a social event sponsored by the licensee. Such license may provide that the licensee may contract with the holder of a full-year on-sale license, issued by the city, for liquor catering services.
- (b) *Permissible applicant.* The applicant for a license under this section must be a club or charitable, religious, or other nonprofit organization in existence for at least three years.
- (c) *Terms and conditions of license.* Temporary licenses are subject to the following terms and conditions:

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- (1) No license is valid until approved by the commissioner of public safety.
 - (2) No license shall be issued for more than three consecutive days.
 - (3) All licenses and licensees are subject to all provisions of statutes and this Code relating to liquor sale and licensing, except those relating to financial responsibility and insurance, and except those which by their nature are not applicable.
 - (4) Licenses may authorize sales on premises other than those owned or permanently occupied by the licensee.
- (d) *Fee.* Each license issued under this section will be subject to a public safety fee, which will be for the purpose of engaging additional police department presence during such events throughout the city. The amount of this fee shall be as provided in the city fee schedule.
- (e) *Police presence at alcohol sales events.* The city police department may provide security and crowd control on the licensed premises during the hours of authorized sales. The police chief will be responsible for determining the type and level of staff to be allocated for these events. Sworn or non-sworn staff may be utilized for these purposes at the discretion of the police chief.

(Code 1985, § 5.53)

Sec. 4-88. License restrictions and conditions; maximum number of licenses.

- (a) No person under 18 years of age may serve or sell liquor on licensed premises.
- (b) No more than one license shall be held by any person. For the purpose of this section, any person owning a beneficial interest of five percent, or more, of any licensed establishment shall be considered a licensee.
- (c) The council shall issue no more than 12 on-sale liquor licenses.
- (d) No on-sale liquor license shall be granted to any person which does not have invested or does not propose to invest in the fixtures and structure of the licensed establishment, exclusive of land, at least \$100,000.00. The council may provide for an independent appraisal, at the expense of the applicant, as an aid in determining such value. If this provision is not complied with within one year from the date of issuance of the license, the same shall be grounds for refusal or revocation of the license. This provision shall not apply to a person who was a licensee on the effective date of this division, or to the heirs, assigns, or successors of such licensee, or to any subsequent addition, enlargement, or alteration of such licensed premises.
- (e) Every license shall be granted subject to the provisions of this chapter and all other applicable provisions of this Code and other laws relating to the operation of the licensed business.

(Code 1985, § 5.70)

State law reference(s)—Restrictions on maximum number of liquor licenses that may be issued, M.S.A. § 340A.413.

Secs. 4-89—4-119. Reserved.

DIVISION 3. CONSUMPTION AND DISPLAY PERMITS

Sec. 4-120. When required.

It is unlawful for any business establishment or club, not holding an on-sale liquor permit to directly or indirectly, or on any pretense or by any device, sell, barter, keep for sale, or otherwise dispose of any liquid for the

purpose of mixing the same with liquor, or permit its members to bring and keep a personal supply of liquor in lockers assigned to such members, without a license therefor from the city.

Sec. 4-121. Restrictions and regulations.

- (a) *Eligible permits.* If the applicant is otherwise eligible, permits may be issued only to:
 - (1) Persons who have not, within five years prior to application, been convicted of a felony or of violating provisions of this chapter or other law relating to the sale or furnishing of alcoholic beverages;
 - (2) A restaurant;
 - (3) A hotel;
 - (4) A 3.2 malt liquor licensee;
 - (5) A resort, as defined in M.S.A. § 157.15;
 - (6) A club or an unincorporated club otherwise meeting the definition of a club, provided that no permit may be issued to a club holding an on-sale liquor license; or
 - (7) A bed and breakfast facility, as defined in M.S.A. § 340A.4011.
- (b) *Liquor sales prohibited.* It is unlawful to sell liquor on permitted premises.
- (c) *Term of permit.* All permits issued under this division shall expire on March 31 of each year.
- (d) *State permit required.* Permits shall be issued only to holders of a consumption and display permit from the commissioner.
- (e) *Lockers.* A club to which a license is issued under this section may allow members to bring and keep a personal supply of liquor in lockers on the club's premises. All bottles kept on the premises must have attached labels signed by the member. No minor may keep a supply of liquor on club premises.
- (f) *Hours and days.* No licensee may permit a person to consume or display liquor, and no person may consume or display liquor, between 1:00 a.m. and 12:00 noon on Sundays, and between 1:00 a.m. and 8:00 a.m., Monday through Saturday.

(Code 1985, § 5.85)

State law reference(s)—Similar provisions, M.S.A. § 340A.414.

Secs. 4-122—4-140. Reserved.

DIVISION 4. 3.2 MALT LIQUOR LICENSES⁵

Sec. 4-141. Required; exceptions.

- (a) It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of 3.2 malt liquor, as part of a commercial transaction, without a license therefor from the city.

⁵Editor's note(s)—Ord. No. 2022-5 , adopted Sept. 19, 2022, amended the title of Div. 4 to read as herein set out. The former Div. 4 title pertained to Malt Liquor Licenses.

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- (b) This section shall not apply to sales by manufacturers to wholesalers or to sales by wholesalers to persons holding 3.2 malt liquor licenses from the city. Annual on-sale 3.2 malt liquor licenses may be issued only to drug stores, restaurants, hotels, bowling centers, clubs, golf courses and establishments used exclusively for the sale of 3.2 malt liquor with the incidental sale of tobacco and soft drinks.
 - (c) Any person licensed to sell liquor on-sale shall not be required to obtain an on-sale 3.2 malt liquor license and may sell 3.2 malt liquor on-sale without an additional license.

(Code 1985, § 5.30; Ord. No. 2022-5 , 9-19-2022)

State law reference(s)—3.2 percent malt liquor licenses, M.S.A. § 340A.403; license restrictions with regard to 3.2 percent malt liquor licenses, M.S.A. § 340A.411.

Sec. 4-142. Temporary 3.2 malt liquor license.

- (a) *Permissible applicants.* A club or charitable, religious, or nonprofit organization, duly incorporated as a nonprofit or religious corporation under state law and having its registered office and principal place of activity within the city, shall qualify for a temporary 3.2 on-sale malt liquor license, for serving malt liquor on school property or church property.
- (b) *Issuance discretionary.* The administrator may, but at no time shall he be under any obligation whatsoever to, grant a temporary 3.2 malt liquor license. The administrator shall verify that the information contained in the application is true and correct and that the applicant has no previous violations. If the administrator determines that restrictions or conditions are warranted, the application shall be referred to the city council for review.
- (c) *Application content; maximum term of license.* The application shall state the exact dates and place of proposed temporary sale. No temporary license shall be issued for a term of more than 30 days.
- (d) *Police presence at alcohol sales events.* The police department may provide security and crowd control on the licensed premises during the hours of authorized sales. The police chief will be responsible for determining the type and level of staff to be allocated for these events. Sworn or non-sworn staff may be utilized for these purposes at the discretion of the police chief.
- (e) *Financial responsibility.* If the premises to be licensed are owned or under the control of the city, the applicant shall file with the city, prior to issuance of the license, a certificate of liability insurance coverage in at least the sum of \$50,000.00 for injury to any one person and \$100,000.00 for injury to more than one person, naming the city as an insured during the license period. Such license shall be issued only on the condition that the applicant will not sell in excess of \$10,000.00 (retail value) worth of 3.2 malt liquor in any calendar year, and thereupon shall be exempt from proof of financial responsibility as provided for herein.
- (f) *Fee.* Each license issued under this section will be subject to a public safety fee, which will be for the purpose of engaging additional police department presence during such events throughout the city. The amount of this fee shall be as provided in the city fee schedule.

(Code 1985, § 5.31; Ord. No. 2022-5 , 9-19-2022)

State law reference(s)—Limitation on number of temporary licenses that may be issued, M.S.A. § 340A.410(10).

Sec. 4-143. Hours and days of 3.2 malt liquor sales.

The hours and days of sale shall be those set by M.S.A. § 340A.504.

(Code 1985, § 5.32; Ord. No. 2022-5 , 9-19-2022)

Secs. 4-144—4-169. Reserved.

DIVISION 5. BREWPUB, BREWER AND DISTILLERY LICENSES

Sec. 4-170. Brewer taproom and micro-distillery cocktail room license.

- (a) *Required.* It is unlawful for a brewer or distiller, to sell on-sale malt liquor or spirits without a license therefore from the city. Annual on-sale brewer taproom or micro-distillery cocktail room licenses may be issued only to brewers or distillers who meet the requirements of this section.
- (b) *Conduct authorized.* A brewer taproom or a micro-distillery cocktail room license authorizes on-sale of malt liquor or spirits (respectively) produced by the brewer or distiller for consumption on the premises of or adjacent to one brewery or micro-distillery location owned by the brewer or distiller.
- (c) *Persons ineligible for licensure.* A brewer taproom or micro-distillery/cocktail room license may not be issued to a brewer or distiller if the brewer or distiller, or any person having an economic interest in the brewery or micro-distillery seeking the license or exercising control over the brewery or distillery seeking the license, brews 250,000 barrels of malt liquor annually, distills more than 40,000 proof gallons annually or produces more than 250,000 gallons of wine annually.
- (d) *Number of licenses per applicant restricted.* A brewer or distiller may only have a total of one license for a brewer taproom or micro-distillery cocktail room.
- (e) *Operation of restaurant on premises.* Licensed brewer taprooms or micro-distillery cocktail rooms may operate a restaurant on the premises without additional licensure.

(Code 1985, § 5.33)

State law reference(s)—Brewer taprooms, M.S.A. § 340A.26; small brewer off-sale, M.S.A. § 340A.28.

Sec. 4-171. Brewer's off-sale license.

- (a) *Number of licenses limited; fee.* The council may issue a license for the off-sale of malt liquor to a brewer located within city limits. No more than two licenses shall be issued under this section. The annual license fee for a brewer off-sale license shall be as set forth in the city fee schedule.
- (b) *Qualification for licensure.* Applicants for the off-sale license must meet the following requirements licensed by the state as a manufacturer or wholesaler under M.S.A. § 340A.301, manufacture fewer than 3,500 barrels of malt liquor in one year at any one licensed premises or hold an on-sale restaurant license issued by the city, and obtain the consent of the commissioner of public safety to hold an off-sale license.
- (c) *Restrictions, conditions and prohibited acts.* The off-sale licensee shall be subject to the following restrictions and conditions:
 - (1) Off-sale shall be limited to malt liquor produced on the licensed premises, packaged as authorized by M.S.A. § 340A.29, as the same may be amended from time to time, and labeled and sealed in accordance with statutory specifications.
 - (2) Off-sale may not exceed 750 barrels per year.
 - (3) Total of on-sale and off-sale by the brewer's off-sale license holder cannot exceed 3,500 barrels per year.

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- (4) Off-sale hours shall be limited to the hours of operation of the municipal dispensary, and on Sundays between the hours of 10:00 a.m. and 10:00 p.m.

- (5) It is unlawful for any brewer to sell malt liquor in violation of this section.

(Code 1985, § 5.35; Ord. No. 2022-7 , 11-7-2022)

State law reference(s)—Brewpubs, M.S.A. § 340A.24.

Sec. 4-172. Hours and days of brewer malt liquor sales.

No on-sale of malt liquor by a brewer shall be made between 2:00 a.m. and 8:00 a.m. on Monday through Sunday.

(Code 1985, § 5.34)

State law reference(s)—Authority of municipalities to limit sales hours, M.S.A. § 340A.504.

Secs. 4-173—4-197. Reserved.

DIVISION 6. WINE LICENSES

Sec. 4-198. On-sale wine license required; exceptions.

It is unlawful for any person, directly or indirectly, on any pretense or by any device, to sell, barter, keep for sale, or otherwise dispose of wine on-sale, as part of a commercial transaction, without a license therefor from the city. This section shall not apply to:

- (1) Sales by manufacturers to wholesalers duly licensed as such by the commissioner;
- (2) Sales by wholesalers to persons holding on-sale or off-sale liquor licenses from the city;
- (3) Sales by wholesalers to persons holding on-sale wine licenses from the city; or
- (4) Sales by on-sale liquor licenses on days and during hours when on-sale liquor sales are permitted.

(Code 1985, § 5.60)

Sec. 4-199. License restrictions and conditions.

- (a) No person under 18 years of age may serve or sell wine on licensed premises.
- (b) On-sale wine licenses shall be granted only to restaurants, as defined in section 4-1; provided, however, for purposes of this section, such restaurant shall have appropriate facilities for seating not less than 25 guests at one time.
- (c) A restaurant which holds both an on-sale wine license and an on-sale 3.2 malt liquor license, and whose gross receipts are at least 60 percent attributable to the sale of food, may sell intoxicating malt liquor at on-sale without an additional license.
- (d) No more than one license shall be held by any person. For the purpose of this section, any person owning a beneficial interest of five percent, or more, of any licensed establishment shall be considered a licensee.

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- (e) Every license shall be granted subject to the provisions of this chapter and all other applicable provisions of this Code and other laws relating to the operation of the licensed business.

(Code 1985, § 5.70)

Sec. 4-200. Hours and days of sales by on-sale wine licensees.

No on-sale of wine shall be made between the hours of 2:00 a.m. and 10:00 a.m. on Sunday, nor between the hours of 2:00 a.m. and 8:00 a.m. on the days of Monday through Saturday, nor between the hours of 8:00 p.m. on December 24 and 8:00 a.m. on December 25.

(Code 1985, § 5.61)

State law reference(s)—Authority of municipalities to limit sales hours, M.S.A. § 340A.504(6).

Secs. 4-201—4-223. Reserved.

DIVISION 7. OTHER LICENSES

Sec. 4-224. Club licenses.

- (a) *Definitions.* The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Guest means a person not a member of the club but present on the club licensed premises in the company of a host member.

Host member means a member who is entertaining a guest who is in the member's company such guest is on the licensed premises.

Member means any person in good standing according to rules and regulations of the licensed club, wherever located, having evidence of current membership upon his person.

- (b) *Daily register.* In addition to all other general provisions, restrictions and regulations set forth in this article relating to malt liquor or liquor licenses, all club licensees shall keep a daily register showing the names of guests present and the name of the host member. Such register shall be open to inspection by police officers.
- (c) *Prohibited acts.* The following are in addition to all other unlawful acts set forth in this chapter relating to sales and purchases of malt liquor or liquor:
- (1) It is unlawful for a club licensee to sell liquor or malt liquor to any person not a member, or a bona fide guest of a member, of the licensed club.
 - (2) It is unlawful for any club licensee to serve malt liquor or liquor to any non-member of the licensed club unless such non-member is a guest.
 - (3) It is unlawful for any person who is not a member, or a bona fide guest of a member, of the licensed club to purchase liquor or malt liquor from the club.
 - (4) It is unlawful for any club licensee to hinder or prevent a police officer from determining compliance with this section and chapter, and all other laws.

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- (5) It is unlawful for any person to refuse, upon request of a licensee or police officer, to provide information as to whether he is a member, guest or host member, or to give false, fraudulent or misleading information in response to such request.

(Code 1985, § 5.71)

Sec. 4-225. Culinary class on-sale license.

- (a) *Required.* It is unlawful for any business establishment to furnish wine or intoxicating liquor to participants in a culinary class without first obtaining a license therefor from the city.
- (b) *Eligible licensees.* The city may issue a limited on-sale intoxicating liquor license to a business establishment pursuant to M.S.A. § 340A.4041 not otherwise eligible for an on-sale intoxicating liquor license, that, as part of its business, conducts culinary or cooking classes for which payment is made by each recipient or advance reservation is required. If the applicant is otherwise eligible, licenses may be issued only to persons who have not, within five years prior to application, been convicted of a felony or of violating provisions of this chapter or other law relating to the sale or furnishing of alcoholic beverages.
- (c) *Term of license; fee.* All licenses shall expire on December 31 of each year. The annual license fee shall be as provided in the city fee schedule.
- (d) *Conduct permitted under license.* The licensee may furnish wine or intoxicating liquor only to participants in the culinary or cooking class and only from 30 minutes prior to the scheduled class through 30 minutes after the class has concluded. Except as modified herein, all other provisions of this chapter relating to on-sale intoxicating liquor licenses shall apply except for the requirement to obtain liability insurance pursuant to M.S.A. § 340.409.

(Code 1985, § 5.83)

Sec. 4-226. Sports or convention facilities license.

- (a) *Council has discretion to authorize.* The council may authorize any holder of an on-sale liquor license issued by the state or by any other municipality to sell liquor at any convention, banquet, conference, meeting or social affair conducted on the premises of a sports or convention facility owned by the city, or instrumentality thereof having independent policy-making and appropriating authority and located within the city.
- (b) *Conduct permitted by license.* The licensee must be engaged to sell liquor at such an event by the person or organization permitted to use the premises and may sell liquor only to persons attending the event. The licensee shall not sell liquor to any person attending or participating in any amateur athletic event. Such sales may be limited to designated areas of the facility. All such sales shall be subject to all laws relating thereto.
- (c) *Police presence at alcohol sales events.* The police department may provide security and crowd control on the licensed premises during the hours of authorized sales. The police chief will be responsible for determining the type and level of staff to be allocated for these events. Sworn or non-sworn staff may be utilized for these purposes at the discretion of the police chief.
- (d) *Financial responsibility.* The licensee must provide proof of financial responsibility as set forth in section 4-50, and the city must be named as the insured during the license period for sales at the sports or convention facility.
- (e) *Fee.* Each license issued under this section will be subject to a public safety fee, which will be for the purpose of engaging additional police department presence during such events throughout the city. The amount of this fee shall be as provided in the city fee schedule.

Chapter 6 ANIMALS⁶

ARTICLE I. IN GENERAL

Sec. 6-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal means a dog or cat.

Cat means both male and female and includes any animal of the cat kind.

Dangerous animal means an animal which has:

- (1) Without provocation, inflicted substantial bodily harm on a human being on public or private property.
- (2) Killed a domestic animal without provocation while off the owner's property.
- (3) Been found to be potentially dangerous and, after the owner has notice that the animal is potentially dangerous, the animal aggressively bites, attacks or endangers the safety of humans or domestic animals.

Dog means both male and female and includes any animal of the dog kind.

Domestic animals means house pets such as dogs, cats, and birds, or other common pets kept in small containments which can be contained within a principal structure throughout the entire year, provided that containment can be accomplished without special modification to the structure requiring a building permit from the city. In addition, the term "domestic animals" includes birds (other than chickens, ducks and geese) and rabbits normally sheltered outside the home.

Farm animals means cattle, hogs, bees, sheep, goats, chickens, turkeys, horses and other animals commonly accepted as farm animals in the state.

Own means to have a property interest in, or to, harbor, feed, board or keep.

Owner means a person who owns an animal regulated.

Potentially dangerous animal means any animal that:

- (1) When unprovoked, inflicts bites on a human or domestic animal on public or private property or attacks a human or domestic animal in any other way that causes injury on public or private property;
- (2) When unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the animal owner's property, in an apparent attitude of attack; or

⁶State law reference(s)—Dogs and cats, M.S.A. §§ 347.01 et seq., 346.50 et seq.; cruelty to animals, M.S.A. § 343.20 et seq.; stray and companion animals, M.S.A. § 346.01 et seq.; animals doing damage, M.S.A. § 346.08 et seq.; Pet and Companion Welfare Act, M.S.A. § 346.35; rabies investigation, M.S.A. § 35.67.

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- (3) Has a known propensity, tendency or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

Substantial bodily harm means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture to any bodily member.

Wild or exotic animals means any animal not included in the definitions for domestic animals or farm animals, whether such animal is commonly found in the wild or in domesticated conditions. Such animals are not permitted within the city limits except for temporary display under permit by the council, as provided for in section 6-8.

(Code 1985, §§ 10.04(1), 11.02)

Sec. 6-2. Keeping animals.

No animals are allowed to be kept within the city except those listed in the following subsections or, if not listed, those that are permitted pursuant to a conditional use permit issued by the city:

- (1) Domestic animals are allowed in all zoning districts.
- (2) Horses are allowed in all zoning districts, provided they are housed on a lot having a minimum size 2½ acres. The number of horses may not exceed one per acre unless a higher number is granted by the issuance of a conditional use permit.
- (3) Farm animals are allowed on all farm property. Farm animals may not be confined in a pen, feedlot or building within 100 feet of any residential dwelling not owned or leased by the farmer.
- (4) Animals being kept as part of the Minnesota Zoological Gardens, St. Paul Como Zoo, or similar institutional docent programs are allowed in all zoning districts. Before such animals are allowed, however, the participant in the program must notify the city administrator in writing of their participation in the program and identify the animal being kept.
- (5) Animals may only be kept for commercial purposes if authorized in the zoning district where the animals are located.
- (6) Notwithstanding the foregoing provisions, animals may not be kept if they cause a nuisance or endanger the health or safety of the community.

(Code 1985, § 11.30(1))

Sec. 6-3. Care of animals.

- (a) Animals kept within the city shall be subject to the following requirements:
 - (1) The size, number, species, facilities for and location of animals kept shall be maintained so as not to constitute a danger or nuisance by means of odor, noise or otherwise.
 - (2) The person caring for any animals shall be of sufficient age, knowledge and experience to care for and control the animals adequately and safely.
- (b) Facilities for housing animals must be:
 - (1) Constructed of such material as is appropriate for the animals involved.
 - (2) Maintained in good repair.

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- (3) Controlled as to temperature, ventilated and lighted compatible with the health and comfort of the animals.
 - (4) Of sufficient size to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition of debility, stress or abnormal behavior patterns.
 - (5) Cleaned as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and reduce odors.
- (c) Animals shall be provided wholesome, palatable food and water free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health.
- (d) Animals kept in pet shops or kennels shall be kept in accordance with regulations for pet shops and kennels in addition to the regulations provided by this chapter.

(Code 1985, § 11.30(2))

Sec. 6-4. Prohibited acts.

It is unlawful for the owner of any animal to:

- (1) Fail to have the animal currently immunized for rabies;
- (2) Fail to have identification firmly attached to a collar worn by the licensed animal;
- (3) Own a dangerous animal;
- (4) Interfere with any police officer, or other city employee, in the performance of his duty to enforce this section;
- (5) Abandon any animal in the city;
- (6) Fail to provide such animal with sufficient good and wholesome food and water, proper shelter and protection from the elements, veterinary care when needed to prevent suffering, and humane care and treatment; or
- (7) Fail to keep his dog from barking, or his dog or cat from howling or whining.

(Code 1985, § 10.04(13))

Sec. 6-5. Animals in heat.

Except for controlled breeding purposes, every female animal in heat shall be kept confined in a building or secure enclosure, or in a veterinary hospital or boarding kennel, in such manner that such female animal cannot come in contact with other animals.

(Code 1985, § 10.04(18))

Sec. 6-6. Animal waste, unlawful acts.

- (a) It is unlawful for any owner to suffer or permit an animal to defecate upon public property, or the private property of another, without immediately removing the excrement and disposing of it in a sanitary manner.
- (b) It is unlawful for any owner to permit animal excrement to accumulate for a period in excess of seven days on premises occupied by him without removal and sanitary disposal.

(Code 1985, § 10.04(19))

Sec. 6-7. Notice to owner of potentially dangerous and dangerous animals.

- (a) Upon a determination that an animal is a potentially dangerous animal, as defined in section 6-1, the police chief shall send a letter via certified U.S. mail to the owner of the animal notifying the owner that the animal has been found to be a potentially dangerous animal and shall advise the owner that if the animal endangers the safety of humans or domestic animals again, it will be considered a dangerous animal and the owner will be deemed to be in violation of this chapter. The notice shall also advise the owner of the animal that they have 14 days to challenge the determination. An owner who wishes to challenge the determination must request a hearing in writing within 14 days of the date of the notice.
- (b) Upon a determination that an animal is a dangerous animal, the police chief shall send a letter via certified U.S. mail or personal service to the owner of the animal notifying the owner that the animal has been found to be a dangerous animal and shall advise the owner that it is unlawful to own a dangerous animal within the city. An animal that has been determined to be a dangerous animal shall be seized by the police and placed in the animal shelter for a period of not less than the 14-day notice period. If the owner requests a hearing, the dangerous animal shall remain in the animal shelter during the pendency of the hearing procedure. In lieu of seizure of the animal, an owner may remove the dangerous animal from the city limits.
- (c) Notwithstanding any other provision of this chapter, all potentially dangerous animals which are outside of the owner's residence, must be kept on a suitable leash, or in an enclosure which restricts the animal's ability to egress from the owner's property.

(Code 1985, § 10.04(14))

State law reference(s)—Dangerous dog regulation, M.S.A. § 347.50 et seq.

Sec. 6-8. Wild animals.

- (a) *Purpose.* This section is adopted for the purpose of protecting the health, safety and welfare of the residents of the city.
- (b) *Definition.* For the purposes of this section, the term "wild animal" means and includes any animal, not of the traditional domesticated species, which is inherently dangerous and presents a potential risk to the public.
- (c) *Running at large prohibited.* It is unlawful for the owner of any wild animal to permit such animal to run at large. Any animal shall be deemed to be running at large with the permission of the owner unless it is effectively confined within a motor vehicle, building, or enclosure.
- (d) *Permit required.* It is unlawful for any person to keep, shelter or harbor any wild animal without a permit therefor from the city.
- (e) *Permit term and fees.* All permits shall be issued for a term of two years and the fee for such permits shall be fixed and determined by the council, adopted by resolution and uniformly enforced. Such fee may from time to time be amended by the council by resolution.
- (f) *Conditions of permit.* No permit for the keeping of wild animals shall be issued until the applicant has met the following criteria for the keeping and housing of wild animals:
 - (1) A plan is approved by the council which establishes the nature and size of the cage or enclosure to house the animal considering the animal's size, weight, strength and relative danger to the public; specifying all protective devices to be maintained to restrain the animal and discourage tampering by

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- humans and other animals; providing for suitable exercise facilities; and an emergency response plan to be on file with the city.
- (2) Erection and maintenance of suitable fencing for the protection of adjoining property owners and the general public.
 - (3) Providing suitable sanitation controls so as not to create a public or private nuisance.
 - (4) Proof of insurance for medical expense and liability.
- (g) *Inspection.* Prior to the issuance of the permit, the city shall require an inspection be made to determine that the facilities are suitable for the protection of the health, safety and welfare of the public. Such inspection shall be made by a person approved by the city and the cost of such inspection shall be borne by the applicant.
- (h) *Suspension or revocation of permit.* The council may, for any violation or other reasonable cause refuse to grant any renewal application, suspend for a period of 60 days, or revoke any permit issued under this section, subject to the following:
- (1) Such action shall be made only upon a finding that the permittee has failed to comply with the provisions of this section.
 - (2) The council shall take such immediate action as it deems necessary for the public protection to remedy any potentially dangerous situation.
 - (3) The owner of such animal shall be responsible for any expense incurred as the result of such action.
 - (4) Before revocation of any permit, the council shall give notice to the permittee and grant such permittee opportunity to be heard.
 - (5) The permittee shall have 30 days following a revocation hearing to correct any violations of this section found to be the basis for revocation, during which time period the revocation shall be suspended.

(Code 1985, § 10.07)

Secs. 6-9—6-34. Reserved.

ARTICLE II. DOGS AND CATS

Sec. 6-35. Vaccination required.

- (a) Every dog and cat kept as a pet shall be vaccinated for rabies. Rabies vaccines shall be administered only by or under the supervision of a veterinarian.
- (b) The dog or cat owner shall provide proof of vaccination within five business days of a request from the city for dogs or cats running at large, dogs being investigated for a dangerous dog or potentially dangerous dog incident, or dogs utilizing a designated dog park within the city limits.
- (c) No dog or cat need be vaccinated when a licensed veterinarian has examined the animal and certified that, at such time, vaccination would endanger its health because of its age, infirmity, debility, illness or other medical consideration. Such an exception certificate must be presented to the city within five days of certification. The animal shall be confined to the owner's property or a veterinary facility until such time as it can be vaccinated.

(Code 1985, § 10.04(2))

Sec. 6-36. Identification required.

All cats and dogs are required to have some identification on them that would assist the city in contacting the owner. Identification allowed under this subdivision includes microchips, veterinarian issued rabies tags, or any tags or collars with contact information and telephone numbers inscribed on them or affixed thereto.

(Code 1985, § 10.04(5))

State law reference(s)—Dog identification required, M.S.A. § 346.50; dog collars to be tagged, M.S.A. § 347.11.

Sec. 6-37. Number of animals restricted.

The number of licensed animals permitted per structure shall not exceed three animals of any combination of cats or dogs.

(Code 1985, § 10.04(3))

Sec. 6-38. Running at large prohibited.

(a) It is unlawful for a person to permit his animal to run at large. A dog or cat shall be presumed to be running at large with the permission of the owner unless it is contained to:

- (1) The property of the owner;
- (2) The property of another with that property owner's permission; or
- (3) Within a city designated dog training and exercise area, by one or more of the following means:
 - a. On a durable leash secured to an object which it cannot move.
 - b. Through the use of an electronic fence system.
 - c. Is under the direct and immediate control of an accompanying person of suitable age and discretion.
 - d. Is on a leash and under the control of an accompanying person of suitable age and discretion.
 - e. Is effectively confined within a motor vehicle, building, or enclosure.

(b) Any unleashed dog or cat, which leaves the permitted premises, shall be determined to be running at large. The owner of the animal shall be responsible for ensuring that the animal is not running at large even when the animal is on the property of another.

(c) Dog training and exercise areas are determined by the city council and must be clearly marked as such.

(Code 1985, § 10.04(6))

State law reference(s)—Animals at large, M.S.A. § 346.16; authority for local regulation of at large dogs, M.S.A. § 346.52.

Sec. 6-39. Seizure by a citizen.

(a) It is lawful for any person to seize and impound an animal so found running at large and shall within six hours thereafter notify the police department of the seizure.

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- (b) It shall be the duty of the police department to release the animal to the owner if possible or place the animal in the animal shelter. If the name of the owner of such animal so seized is known to the person who first takes such animal into custody, he shall inform the police department of the name of the owner, and the address if known.

(Code 1985, § 10.04(7))

Sec. 6-40. Exceptions.

The regulatory provisions of this article regarding dogs shall not apply to:

- (1) The ownership or use of seeing-eye dogs by blind persons;
- (2) Dogs used in police activities of the city such as canine corps or tracking dogs used by or with the permission of the police department;
- (3) Dogs which have been certified by the state as service dogs;
- (4) Animals kept in a laboratory for scientific or experimental purposes; or
- (5) Animals kept in an animal hospital or clinic for treatment by a licensed veterinarian.

(Code 1985, § 10.04(21))

State law reference(s)—Dangerous dog regulations inapplicable to dogs used by law enforcement officers, M.S.A. § 347.51.

Sec. 6-41. Unattended dogs and cats in motor vehicles.

- (a) No person shall leave a dog or a cat unattended in a standing or parked motor vehicle in a manner that endangers the dog's or cat's health or safety. Any police or other authorized city officer, animal warden, or a volunteer or professional member of city fire department or rescue may use reasonable force to enter a motor vehicle and remove a dog or cat which has been left in the vehicle in violation of this section.
- (b) A person removing a dog or a cat under this section shall use reasonable means to contact the owner of the dog or cat to arrange for its return home. If the person is unable to contact the owner, the person may take the dog or cat to an animal shelter.

State law reference(s)—Similar provision, M.S.A. § 346.57.

Secs. 6-42—6-70. Reserved.

ARTICLE III. ADMINISTRATION AND ENFORCEMENT

DIVISION 1. GENERALLY

Sec. 6-71. Immobilization of animals.

For the purpose of enforcement of this article, any peace officer, or person whose duty is animal control, may use a so-called tranquilizer gun or other instrument for the purpose of immobilizing and catching an animal.

(Code 1985, § 10.04(8))

Sec. 6-72. Summary destruction.

If an animal is diseased, vicious, dangerous, rabid or exposed to rabies and such animal cannot be impounded after a reasonable effort or cannot be impounded without serious risk to the person attempting to impound, such animal may be destroyed in a humane manner.

(Code 1985, § 10.04(9))

Sec. 6-73. Animal shelter.

- (a) When any animal is found in the city without a license tag, running at large, or otherwise in violation of this section, it may be placed in the animal shelter, and an accurate record of the time of such placement shall be kept on each animal. Every animal so placed in the animal shelter shall be held for redemption by the owner for a period of not less than five regular business days.
- (b) A regular business day is one during which the shelter is open for business to the public for at least four hours between 8:00 a.m. and 7:00 p.m.
- (c) Impoundment records shall be preserved for a minimum of six months and shall show:
 - (1) The description of the animal by species, breed, sex, approximate age, and other distinguishing traits;
 - (2) The location at which the animal was seized;
 - (3) The date of seizure; and
 - (4) The name and address of the person to whom any animal was transferred. If unclaimed, an animal may be turned over to an organization authorized by the council to receive the animal and either place the animal for adoption or destroy the animal.
- (d) If not adopted, such animal shall be humanely destroyed and the carcass disposed of, unless it is requested by a licensed educational or scientific institution under authority of M.S.A. § 35.71; provided, however, that if a tag affixed to the animal, or a statement by the animal's owner after seizure specifies that the animal should not be used for research, such animal shall not be made available to any such institution but may be destroyed after the expiration of the five-day period.

(Code 1985, § 10.04(10))

State law reference(s)—Notice to owner of impoundment, M.S.A. § 346.54.

Sec. 6-74. Release of impounded animals.

Animals shall be released to their owners after payment of the impounding, maintenance, and any other applicable fees or charges.

(Code 1985, § 10.04(12))

Sec. 6-75. Fees.

All administrative fees associated with this chapter shall be as provided in the city fee schedule.

(Code 1985, § 10.04(20))

Secs. 6-76—6-93. Reserved.

DIVISION 2. RABIES RESPONSE⁷

Sec. 6-94. Procedure upon animal bite.

- (a) Every animal which bites a person shall be promptly reported to the police chief and shall thereupon be securely quarantined for a period of ten days and shall not be released from such quarantine except by written permission of the police chief. In the discretion of the police chief, such quarantine may be on the premises of the owner or at the veterinary hospital of his choice. If the animal is quarantined on the premises of the owner, the city shall have access to the animal at any reasonable time for study and observation of rabies symptoms. In the case of a stray animal or in the case of an animal whose ownership is not known, such quarantine shall be at the animal shelter, or at the discretion of the police chief, the animal may be confined in a veterinary hospital designated by him.
- (b) The owners, upon demand made by any city employee empowered by the council to enforce this section, shall forthwith surrender any animal which has bitten a human, or which is suspected as having been exposed to rabies, for the purpose of supervised quarantine. The expenses of the quarantine shall be borne by the owner and the animal may be reclaimed by the owner if adjudged free of rabies upon payment of fees set forth in this section and upon compliance with licensing provisions set forth in this section.
- (c) When an animal under quarantine and diagnosed as being rabid or suspected by a licensed veterinarian as being rabid dies or is killed, the city shall immediately send the head of such animal and rabies data report to the state health department for pathological examination and shall notify all persons concerned of the results of such examination.
- (d) The city shall issue such proclamation and take such action when rabies is suspected or exists as is required by state law.

(Code 1985, § 10.04(15))

Sec. 6-95. Reports of bite cases.

It is the duty of every physician, or other practitioner, to report to the police chief the names and addresses of persons treated for bites inflicted by animals within the city, together with such other information as will be helpful in rabies control.

(Code 1985, § 10.04(16))

Sec. 6-96. Responsibility of veterinarians.

It is the duty of every licensed veterinarian to report to the police chief his diagnosis of an animal from within the city observed by him as a rabies suspect.

(Code 1985, § 10.04(17))

⁷State law reference(s)—Authority for local rabies program, M.S.A. § 346.52.

Chapter 8 BODY ART AND PIERCING⁸

ARTICLE I. IN GENERAL

Sec. 8-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Body art establishment means any structure or venue, whether permanent, temporary, or mobile, where body art is performed. The term "mobile establishments" includes vehicle-mounted units, either motorized or trailered, and readily moveable without disassembling and where body art procedures are regularly performed in more than one geographic location.

Body piercing means the penetration or puncturing of the skin by any method for the purpose of inserting jewelry or other objects in or through the body. The term "body piercing" also includes branding, scarification, suspension, subdermal implantation, microdermal, and tongue bifurcation. The term "body piercing" does not include the piercing of the outer perimeter or the lobe of the ear using a presterilized single-use stud-and-clasp ear-piercing system.

Employee means any person at least 18 years of age other than an operator who renders any service in connection with the operation of a tattoo or body piercing establishment and receives compensation from the operator of the business or its patrons.

Operator means any person or entity who controls, operates, or manages body art activities at a body art establishment and who is responsible for the establishment's compliance with these regulations, whether or not the person actually performs body art activities.

Tattooing means any method of placing indelible ink or other pigments into or under the skin or mucosa with needles or any other instruments used to puncture the skin, resulting in permanent coloration of the skin or mucosa. The term "tattooing" also includes micropigmentation and cosmetic tattooing.

(Code 1985, § 6.42(2))

Sec. 8-2. Penalties for violation.

A violation of this chapter shall be a misdemeanor punishable, as provided in section 1-11.

(Code 1985, § 6.42(12))

Secs. 8-3—8-22. Reserved.

ARTICLE II. LICENSES

⁸State law reference(s)—Body art, M.S.A. ch. 146B.

Sec. 8-23. State and local license required; exceptions.

No person shall operate any establishment where tattooing or body piercing is practiced, nor engage in the practice of tattooing or body piercing without being licensed by the state, as required by M.S.A. § 146B.03, and by the city pursuant to this chapter. This section shall not apply to persons exempted from license requirements pursuant to M.S.A. § 146B.03(3).

(Code 1985, § 6.42(3))

Sec. 8-24. Application for city business license.

- (a) Every application for a license under this article shall be made on a form supplied by the city, shall be accompanied by a copy of the applicant's state license issued pursuant to M.S.A. ch. 146B.
- (b) The application and investigation fees required pursuant to this article shall be submitted with the completed application.
- (c) All applications for a license shall be signed and sworn to by the applicant, if the applicant is a natural persons; by an officer, if the applicant is a corporation; by a general partner, if the applicant is a partnership; or by a managing officer, of the applicant is an unincorporated association.
- (d) Any falsification, with regard to the license application, shall result in the denial of a license.

(Code 1985, § 6.42(4), (5))

Sec. 8-25. Investigation and verification.

The city shall investigate and verify the facts set forth in the application, including obtaining any necessary criminal background checks, to ensure compliance with this article.

(Code 1985, § 6.42(6))

Sec. 8-26. Issuance of license or denial of application.

The city administrator shall issue the license within 30 days of receipt of the application, unless the administrator finds that:

- (1) The applicant does not have a valid state license issuance pursuant to M.S.A. ch.146B.
- (2) The correct license fee has not been tendered to the city and in the case of a check or bank draft, honored with payment upon presentation.
- (3) The operation, as proposed by the applicant, if permitted, would not comply with all applicable laws, including, but not limited to, the city's business, zoning and health regulations and M.S.A. ch. 146B.
- (4) The applicant has knowingly made any false, misleading or fraudulent statement of fact in the application for the permit or in any document required by the city in connection therewith.
- (5) The applicant has operated a tattoo establishment and has had a license denied, revoked or suspended for any of the cases, in subsections (1) through (4) of this section, by the city or any other state or local agency within two years prior to the date of the application.

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- (6) The applicant if an individual, or any of the officers and directors if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, and the manager or other person principally in charge of the operation of the business is not at least the age of 18 years.

(Code 1985, § 6.42(6))

Sec. 8-27. Application, investigation and license fees.

- (a) *Application fee.* The license application fee shall be in the amount provided in the city fee schedule and shall be paid in full before the application for a license shall be accepted. Upon rejection of any application, the license fee shall be refunded in full to the applicant except when rejection of the application is for a willful misstatement in the license application.
- (b) *Investigation fee.* An applicant for any license under this article shall pay the city at the time an original application is submitted, a non-refundable fee in the amount provided in the city fee schedule to cover the costs involved in verifying the license application and to cover the expense of any investigation needed to ensure compliance with this chapter.
- (c) *License fee.* An annual license fee in the amount provided in the city fee schedule shall be submitted upon issuance of the license.

(Code 1985, § 6.42(7))

Sec. 8-28. Liability insurance required.

All licensees maintain a valid certificate of insurance issued by an insurance company licensed to do business in the state indicating that the licensee is currently covered in the body art and piercing business by a liability insurance policy. The minimum limits of coverage for such insurance shall be \$200,000.00 for each claim and \$500,000.00 for each group of claims. Such insurance shall be kept in force during the term of the license and shall provide for notification to the city prior to terminating or cancellation. A certificate of insurance shall be filed with the city with the submission of the license application.

(Code 1985, § 6.42(10)(H))

Sec. 8-29. Locations ineligible for a license.

The following locations shall be ineligible for a license under this article:

- (1) *Real property taxes due.* No license shall be granted or renewed for operation on any property on which taxes, assessments, or the financial claims of the state, county, school district, or city are due, delinquent, or unpaid. In the event a suit has been commenced under M.S.A. §§ 278.01—278.03 questioning the amount of validity or taxes, the city council may on application waive strict compliance with this provision; provided, however, that no waiver may be granted for taxes or any portion thereof which remain unpaid for a period exceeding one year after becoming due.
- (2) *Improper zoning.* No license shall be granted or renewed if the property is not properly zoned or does not qualify as a legal nonconforming use for tattooing or body piercing establishments under city building and zoning regulations.
- (3) *Premises licensed for alcoholic beverages.* No license shall be granted or renewed if the premises is licensed by the city for alcoholic beverage sale or consumption.

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- (4) *Premises licensed as adult establishment.* No license shall be granted or renewed if the premises is licensed by the city as a sexually oriented business.

(Code 1985, § 6.42(9))

Sec. 8-30. Transfer prohibited; exception.

The license granted under this article is for the operator and the premises named on the approved license application. No transfer of a license shall be permitted from place-to-place or from person-to-person without first complying with the requirements of an original application, except in the case in which an existing non-corporate licensee is incorporated and incorporation does not affect the ownership, control, and interest of the existing licensed establishment.

(Code 1985, § 6.42(10)(B))

Sec. 8-31. License suspension or revocation.

- (a) The city council may revoke the license or suspend the license for a violation of any provision of this chapter, any other local law governing the same activity during the license period, or any criminal law during the license period which adversely affects the ability to honestly, safely, or lawfully conduct a tattooing or body piercing business.
- (b) The city council may, upon ten days written notice to the operator and following a public hearing, revoke the license or suspend the license if the licensee submitted false information or omitted material information in the license process required by this chapter.
- (c) No person shall solicit business or offer to perform tattooing services while under license suspension or revocation imposed by the city or by the state.
- (d) Suspension of the operator's state license shall automatically suspend the city license. Revocation of the operator's state license shall automatically revoke the city license.

(Code 1985, § 6.42(10)(E), (11))

Secs. 8-32—8-50. Reserved.

ARTICLE III. PREMISES AND OPERATION REQUIREMENTS

Sec. 8-51. Compliance with state law required; technicians to hold state license.

An establishment licensed under this article and all owners and employees thereof shall at all times be in compliance with the health, safety and professional requirements of M.S.A. ch. 146B. All technicians performing body art or piercing must have a valid state license pursuant to M.S.A. § 146B.03.

Sec. 8-52. Structural and use changes in licensed premises.

- (a) The body art or body piercing establishment license are only effective for the compact and contiguous space specified in the approved license application. If the licensed premises are enlarged, altered, or extended, the licensee shall inform the city.

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- (b) No person shall engage in body art or piercing at any place other than the place or location named or described in the application and license. If other services are offered at the licensee's premises, a separate room shall be required for body art or piercing services.

(Code 1985, § 6.42(10)(D))

Sec. 8-53. Hours of operation.

A licensee under this article shall not be open for business for tattooing or body piercing before 7:00 a.m. or after 11:00 p.m.

(Code 1985, § 6.42(10)(C))

Sec. 8-54. Tattooing and body piercing minors restricted.

No person shall tattoo any person under the age of 18 years except in the presence of, and with the written permission of, the parent or legal guardian of such minor.

(Code 1985, § 6.42(10)(A))

Sec. 8-55. Maintenance of order.

The licensee shall be responsible for the conduct of the business being operated and shall at all times maintain conditions of order.

(Code 1985, § 6.42(10)(F))

Chapter 10 BUILDINGS AND CONSTRUCTION⁹

ARTICLE I. IN GENERAL

Sec. 10-1. Construction related codes adopted.

The city adopts, as though fully set forth in this chapter, the most recent edition of the following state construction-related codes, as though codes may be amended from time to time, one copy of which shall be marked "City of Buffalo-Official Copy" and kept on file in the office of the city administrator, open to inspection and use by the public:

- (1) Minnesota Building Code.
- (2) Minnesota Residential Code.
- (3) Minnesota Energy Code.
- (4) Minnesota Accessibility Code.

⁹State law reference(s)—Construction codes and licensing, M.S.A. ch. 326B; state building code, M.S.A. § 326B.101 et seq.; enforcement of state building code by municipalities, M.S.A. § 326B.121.

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- (5) Minnesota Mechanical and Fuel Gas Code.
 - (6) Minnesota Plumbing Code.
 - (7) Minnesota Conservation Code for Existing Buildings.
 - (8) Minnesota Fire Code.
 - (9) Minnesota Building Code Administration.
 - (10) Minnesota Provisions to the State Building Code.
 - (11) Minnesota Elevator and Related Devices Code.
 - (12) Minnesota Electrical Code.
 - (13) Minnesota Solar Energy Systems.
 - (14) Minnesota Floodproofing Regulations.
 - (15) Minnesota Manufactured Home Code.
 - (16) Minnesota Prefabricated Structure Code.
 - (17) Minnesota Industrialized/Modular Building Code.
 - (18) Minnesota Storm Shelters (Manufactured Home Parks).
 - (19) Minnesota High Pressure Piping Code.
 - (20) Understanding Amendments to the 2020 Minnesota State Building Code.

(Code 1985, § 4.01)

Sec. 10-2. Permits required; fees.

It is unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish any building or structure, or any part or portion thereof, including, but not limited to, the plumbing, electrical, ventilating, heating or air conditioning systems therein, or cause the same to be done, without first obtaining a separate building or mechanical permit for each such building, structure or mechanical components from the city. Fees for permits shall be as provided in the city fee schedule.

(Code 1985, §§ 4.02, 4.03)

Secs. 10-3—10-22. Reserved.

ARTICLE II. MOVING BUILDINGS

Sec. 10-23. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Combined moving permit means a permit to move a building on both a street and a highway.

Highway means a public thoroughfare for vehicular traffic which is a state trunk highway, county state-aid highway, or county road.

Highway moving permit means a permit to move a building on a highway for which a fee is charged which does not include route approval, but does include regulation of activities which do not involve the use of the highway, which activities include, but are not limited to, repairs or alterations to a municipal utility required by reason of such movement.

Moving permit means a document allowing the use of a street or highway for the purpose of moving a building.

Street means a public thoroughfare for vehicular traffic which is not a state trunk highway, county state-aid highway or county road.

Street moving permit means a permit to move a building on a street for which a fee is charged which does include route approval, together with use of the street and activities, including, but not limited to, repairs or alterations to a municipal utility required by reason of such movement.

(Code 1985, § 4.10(1))

Sec. 10-24. Moving permit required; fees.

- (a) The application for a street, highway or combined moving permit shall state the following:
 - (1) Dimensions, weight, and approximate loaded height of the structure or building proposed to be moved;
 - (2) Places from which and to which it is to be moved;
 - (3) Route to be followed;
 - (4) Dates and times of moving and parking;
 - (5) Name and address of the mover; and
 - (6) The municipal utility and public property repairs or alterations that will be required by reason of such movement.
- (b) In the case of a street moving permit or combined moving permit the application shall also state the size and weight of the structure or building proposed to be moved and the street alterations or repairs that will be required by reason of such movement.
- (c) Permits shall be issued only for moving buildings by building movers licensed by the state. Fees to be charged are a moving permit fee to cover use of streets and route approval and a fee equal to the anticipated amount required to compensate the city for any municipal utility and public property (other than streets) repairs or alterations occasioned by such movement. All permit fees shall be paid in advance of issuance.

(Code 1985, § 4.10(2), (3))

Sec. 10-25. Building permit and code compliance required.

Before any building is moved from one location to another within the city, or from a point of origin outside the city to a destination within the city, regardless of the route of movement, it shall be inspected and a building permit shall have been issued for at least the work necessary to bring it into full compliance with the state building code.

(Code 1985, § 4.10(4))

Sec. 10-26. Prohibited acts.

It is unlawful for any person to:

- (1) Move a building on any street without a moving permit and a building permit from the city.
- (2) Move a building on any highway without a highway moving permit from the city.
- (3) Move any building (including a manufactured home) if the point of origin or destination, or both, is within the city, and regardless of the route of movement, without having paid in full all real and personal property taxes, special assessments and municipal utility charges due on the premises of origin and filing written proof of such payment with the city.

(Code 1985, § 4.10(5))

Sec. 10-27. Denial of permits.

Any permit under this section shall be denied upon a finding of any one of the following:

- (1) The building is in such state of deterioration or disrepair or is otherwise so structurally unsafe that it would constitute a danger to persons or property in the city.
- (2) The building is structurally unsafe or unfit for the purpose for which moved if the location to which the building is to be moved is in the city.
- (3) If the location to which the building is to be moved is in the city, the building is in substantial variance with either the established or the expected pattern of building development within the neighborhood to which the building is to be moved. Comparative age, bulk, architectural style and quality of construction of both the building to be moved and the buildings existing in the neighborhood shall be considered in determining whether a building is in substantial variance.

(Code 1985, § 4.10(6))

Secs. 10-28—10-57. Reserved.***ARTICLE III. COMMERCIAL AND INDUSTRIAL PROPERTY MAINTENANCE******DIVISION 1. GENERALLY*****Sec. 10-58. Findings and purpose.**

The city council finds that it is in the best interest of the city to protect the public health, safety, and general welfare of its citizens. To this end, the city believes that by adoption of these commercial/industrial property maintenance regulations, it will further the following objectives:

- (1) To preserve the value of commercial and industrial property within the city.
- (2) To protect the character and stability of commercial and industrial areas of the city.
- (3) To provide for minimum standards of maintenance for commercial/industrial properties within the city and ensure compliance.

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- (4) To provide a mechanism to conditions upon commercial/industrial property which do not comply with the standards of maintenance established herein.
 - (5) To assist in identification and correction of dangerous or life-threatening conditions that may be identified within the city.
 - (6) To provide a mechanism to mitigate potential public health issues identified within the city.

(Code 1985, § 4.30(1))

Sec. 10-59. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory structure means a subordinate building, located on the same lot as the main building, which is reasonably necessary, incidental to, and supportive of the principal building's use. An accessory structure shall be lesser in extent, size, or area to that of the principal building. Accessory buildings or structures shall include, but are not limited to, decks, porches, detached garages, and sheds.

Building means and includes, but is not limited to, dwellings, offices, warehouses, and stores and shall include all buildings containing commercial or industrial uses, regardless of zoning district, with the exception of legal home occupations on residentially zoned property. The term "building" includes the term "structure".

Fence means any structure, wall, or gate erected as a permanent dividing marker, partition, visual or physical barrier, or enclosure, excluding any permitted temporary fence as regulated in the zoning regulations of this Code, within a parcel of land regardless of whether the parcel is platted or unplatted.

Property means a developed or undeveloped land, parcel or platted lot, including any building structures, and accessory structures thereon and shall include all land, parcels, or lots containing commercial or industrial uses, regardless of zoning district, with the exception of legal home occupations on residentially zoned property.

Structure means anything which is built, constructed or erected; an edifice or building of any kind; or any piece of work artificially built up or composed of parts joined together in some definite manner whether temporary or permanent in character.

Weeds means all grasses, annual or perennial plants and vegetation, other than trees or shrubs. This term shall not include cultivated lawns, flowers and gardens.

(Code 1985, § 4.30(2))

Sec. 10-60. Building structural condition, architectural appearance, and identification.

- (a) *Building material condition.* Any building or structure is a public nuisance if its exterior does not comply with the following requirements:
 - (1) All exterior property shall be maintained in a clean, safe, and sanitary condition.
 - (2) No part of any exterior building surface shall have significant deterioration, including, but not limited to, holes, breaks, gaps, or loose or rotting materials.
 - (3) All exterior surfaces of the structure, including, but not limited to, doors, door and window frames, cornices, porches and trim, shall be maintained in a good and safe condition.
 - (4) Exterior wood surfaces on the structures, other than decay resistant woods, stucco or other materials that do not normally require protection from the elements shall be protected from the elements and

decay by staining, painting or other protective covering or treatment or other appropriate method acceptable to the city.

- (5) With regard to broken windows, repair shall require replacement of all broken glass, or in the alternative, remodeling of the exterior by removing the window and its frame and replacing such window with exterior siding to match and blend in with the surrounding siding.
- (b) *Premises identification.* All buildings shall have address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals. Numbers shall be a minimum of four inches in height or larger as necessary to ensure visibility.
- (c) *Architectural elements.* All architectural elements, including, but not limited to, cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.

(Code 1985, § 4.30(3))

Sec. 10-61. Vacant building security and maintenance.

- (a) *Determination, declaration of vacancy.* Any vacant building or structure in the city:
 - (1) That is found by an authorized employee or agent of the city to be dangerous to public safety or health by reason of fire damage, storm damage, vandalism, defective chimneys or stovepipes, dilapidated condition or decay, or any other defect endangering public safety or health, is declared to be a public nuisance and a hazardous structure or condition.
 - (2) Which is damaged, decayed, dilapidated, unsanitary, unsafe, vermin or rodent infested, presents environmental health risks or which lacks provisions for safe illumination, ventilation, or sanitary facilities to the extent that the defects create a hazard to the health, safety, or welfare of the public, may be declared unfit for human habitation or unsafe to the public by the city.
- (b) *Security.* Vacant buildings violating this section shall be secured in accordance with M.S.A. § 463.251 and applicable building code requirements. Security shall include the following:
 - (1) Windows and doors shall be covered to prevent entry within a frame, and with covering materials, that are designed to complement or match those of the existing building.
 - (2) Any part of the building, such as walls or roof, which is damaged in such a way as to allow possible entry, shall be repaired with materials that match the materials used for that part elsewhere on the building, and in a manner which masks the visible impression of vacancy.
- (c) *Action by city.* When any vacant building has been declared unfit for human habitation or unsafe to the public, the city may proceed to declare the building a hazardous building or hazardous property and may seek to correct or remove the hazardous condition as authorized by state law.

(Code 1985, § 4.30(4))

State law reference(s)—Securing vacant buildings, M.S.A. § 463.251.

Sec. 10-62. Landscaping and grounds maintenance.

- (a) *Vegetation, trimming and replacement (trees and shrubs).* The owner and any respective agents responsible by contract or law for property maintenance shall be jointly and severally responsible for the planting, trimming and maintenance of all site trees and shrubs in a condition presenting a healthy, neat and orderly

appearance which is free from refuse and debris. Plants and ground cover which are required by an approved site or landscape plan and which have died shall be replaced as soon as seasonal or weather conditions allow.

- (b) *Weeds.* All premises and exterior property shall be maintained free from weeds or plant growth in excess of 12 inches. All noxious weeds shall be prohibited and removed.
- (c) *Grass mowing and irrigation.* All grass shall be maintained at a height not exceeding 12 inches. All exterior property areas devoted to grass shall be maintained and irrigated (watered) as necessary to ensure vegetative health. The city acknowledges that the legitimate maintenance of natural landscapes using drought-tolerant and native species may justify an exemption from this provision.
- (d) *Sidewalks and driveways.* All sidewalks, walkways, stairs, driveways, parking spaces, other hardscaped surfaces such as patios, and similar areas shall be kept in a proper state of repair and maintained free from hazardous conditions.
- (e) *Parking lots.* Unless otherwise approved by the city, every lot or area used for public or private parking shall be maintained in accordance with the following requirements:
 - (1) *Pavement.* Off-street parking areas shall be paved and maintained so as to eliminate dust or mud and shall be graded and drained to dispose of surface water.
 - (2) *Striping.* Designated parking spaces shall be indicated and maintained on the surface of off-street parking areas with paint or other striping material approved by the city.
 - (3) *Curbing.* Curb barriers (around the perimeter or within off-street parking areas) shall be maintained so as not to exhibit any significant deterioration.
- (f) *Fencing.* Any fence is a public nuisance if it does not comply with the following requirements:
 - (1) The fence shall be firmly fastened and anchored in order that it is not leaning or otherwise in any stage of collapse.
 - (2) The fence shall be maintained in sound and good repair and free from deterioration, loose or rotting pieces, or holes, breaks, or gaps not otherwise intended in the original design of the fence. The fence shall be free from any defects or condition which makes the fence hazardous.
 - (3) All exterior wood surfaces of any fence, other than decay resistant woods, shall be protected from the elements by paint or other protective surface covering or treatment, which shall be maintained in good repair to provide the intended protection from the elements.
 - (4) No fence section shall have peeling, cracked, chipped or otherwise deteriorated surface finish, including, but not limited to, paint or other protective covering or treatment, on more than 20 percent of any one linear ten-foot section of the fence.

(Code 1985, § 4.30(5))

Sec. 10-63. Accessory uses, buildings and structures.

- (a) *Building materials condition.* The exterior of all accessory structures, including, but not limited to, fences and walls shall be maintained in structurally sound condition and in good repair.
- (b) *Architectural elements.* All architectural elements accessory to the principal building shall be maintained in a structurally sound condition and in good repair (as similarly required of the principal building). Architectural elements include, but are not limited to, cornices, belt courses, corbels, terra cotta trims, wall facings and similar decorative features.

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- (c) *Storage and screening.* Except as specifically allowed within the applicable zoning district or as a listed exception, all materials and equipment shall be stored indoors. When allowed, materials and equipment stored outdoors shall be screened from eye level view of abutting residential zoning districts in accordance with the city's zoning regulations and maintained as follows:
- (1) Maintenance of required screening (plantings, berm or fence) shall be the joint and several responsibility of the individual property owner, its respective agents responsible by contract or law for such maintenance, or, where applicable, the property owners' association.
 - (2) All fence repairs shall be consistent with the original fence design in regard to location and appearance.
 - (3) Wherever landscaping or fencing improvements have been made pursuant to city approval as a part of zoning, subdivision, or site plan review process, replacement of landscape materials or plantings shall be consistent with the original landscaping plan, or screening and landscaping as required by the city's zoning regulations.
 - (4) All repair or plant replacement shall be done within 45 days of written notification from the zoning administrator, weather permitting.
 - (5) Commercial, institutional, and non-NPDES permitted industrial facilities storing salt and salt-containing materials outdoors must meet minimum standards for storage and handling. Storage areas must be covered; located outside of areas likely to flood or to be exposed to stormwater or snowmelt runoff; located on an impervious surface; and protection practices to reduce exposure when transferring material in designated salt storage areas such as but not limited to sweeping, diversions, and/or containment must be implemented.
- (d) *Signage.* All signs shall be maintained in a safe, presentable and good structural condition at all times. Maintenance shall include painting, repainting, cleaning, replacement or repair of defective parts, replacement of missing letters and other necessary acts. Any sign which the city finds is in a dangerous or defective condition shall be removed or repaired by the owner of the sign or the owner of the premises on which the sign is located.
- (e) *Exterior lighting.* All light fixtures shall be maintained in good repair. Lights for illuminating parking areas, loading areas or yards for safety and security purposes shall be maintained in such a manner that the maximum illumination levels established within the city's zoning regulations are not exceeded.

(Code 1985, § 4.30(6); Ord. No. 2022-6 , 10-3-2022)

Sec. 10-64. Accumulations and hazardous material.

- (a) *Accumulations.* Hazardous substances, and dangerous materials, pollutants, or contaminants, as those terms are defined by federal, state, and local laws, shall not be stored or allowed to accumulate in stairways, passageways, doors, windows, fire escapes or other means of egress.
- (b) *Hazardous material.* Hazardous substances, refuse, pollutants and contaminants, as those terms are defined by federal, state, and local laws, shall not be accumulated or stored unless storage complies with the applicable requirements of all laws, rules and ordinances pertaining to the activity, including, but not limited to, the city's building code and fire prevention codes and any other applicable local, state, or federal regulation.

(Code 1985, § 4.30(7))

Sec. 10-65. Rubbish, garbage and trash.

- (a) *Accumulation or storage of rubbish and garbage.* All exterior property areas shall be free from any unreasonable accumulation of rubbish and garbage.
- (b) *Disposal of rubbish.* Every occupant of a structure shall reasonably store and dispose of all rubbish and garbage in a clean and sanitary manner in accordance with this Code and state law.
- (c) *Screening.* Garbage and recycling containers shall be either stored inside a building such that they are not visible from adjacent public streets or adjoining properties or stored outside but fully screened from view of adjacent public streets or adjoining properties by landscaping or fencing materials.
- (d) *Collection.* Discarded materials and equipment shall not be left outside for collection and disposal for more than 72 hours. Materials and equipment not awaiting collection and disposal shall not be placed outside.

(Code 1985, § 4.30(8))

Sec. 10-66. Storm drainage.

- (a) *Public nuisance.* Stormwater runoff and drainage of roofs and other hard surfaced areas on property shall not be allowed to occur in a manner that creates a public nuisance and shall comply with the requirements of this Code.
- (b) *Site grading.* Except in the case of approved retention areas and reservoirs, all premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure located thereon.

(Code 1985, § 4.30(9))

Secs. 10-67—10-90. Reserved.***DIVISION 2. ADMINISTRATION AND ENFORCEMENT*****Sec. 10-91. City council to enforce or delegate enforcement.**

The city council shall enforce the provisions of this division and may by resolution delegate to various officers or agencies power to enforce particular provisions of this chapter, including the power to inspect private property.

(Code 1985, § 4.30(10)(A))

Sec. 10-92. Notice to abate.

- (a) When, in the judgment of city council or the officer charged with enforcement of this chapter, it is determined that a violation hereof is being maintained or exists within the city, such officer shall notify in writing the person committing or maintaining such violation and the owner of the property and require them to remedy such violation and to remove such conditions or remedy such defects.
- (b) The notice shall be delivered to the person committing or maintaining violation and the owner of the property or may be delivered by mail. If the property is not occupied and the address of the owner is unknown, service on the owner may be accomplished in the manner specified for service in Rule 4 of the state Rules of Civil Procedure, except in the case of an emergency and then in such case, service shall be

accomplished after posting such notice for 24 hours. Service of notice may be proven by filing an affidavit of service in the office of the city clerk setting forth the manner and time thereof.

- (c) The notice shall require the owner or occupant of the property, or both, to take corrective steps within a time as defined by the officer charged with enforcement to remedy such violations, such steps and time to be designated in the notice, but the maximum time to remedy a violation after service of such notice shall not exceed 120 days. In the case of severe financial or physical hardship, the council may grant an extension to the time limit.
- (d) The violation shall be corrected immediately in the case of imminent danger to the public health, safety, or welfare.

(Code 1985, § 4.30(10)(B))

Sec. 10-93. Report of failure to abate.

When notice so given is not complied with, such noncompliance shall be reported to the city for such action as may be necessary and deemed advisable to abate and enjoin further continuation of such nuisance, including referring the matter to the city's prosecuting attorney to pursue a judicial remedy on behalf of the city.

(Code 1985, § 4.30(10)(C))

Sec. 10-94. Abatement by city.

In the event the city chooses to abate the violation, the city shall adopt a resolution setting forth the specific details of the corrective matters to be taken. A copy of the resolution shall be sent to the property owner by certified mail and if the violation is not abated within ten days of the mailing of the resolution, the city shall take all actions necessary to abate the violation, keeping accurate records of the cost of the same.

(Code 1985, § 4.30(10)(D))

Sec. 10-95. Costs to owner.

The finance manager shall prepare a bill and mail it to the owner of the property for the costs incurred by the city, including, but not limited to, administrative costs, attorney fees and costs and the costs of any outside contractor engaged by the city to correct such violation, and thereupon the amount shall be immediately due and payable to the city.

(Code 1985, § 4.30(10)(E))

Sec. 10-96. Special assessment.

- (a) If the total amount due the city is not paid to the city within 20 days after the mailing of the bill, the finance manager shall extend the costs of abating the violation as a special assessment against the property upon which the violation was located, and such special assessment shall, at the time of certifying taxes to the county auditor, be certified for collection as other special taxes and assessments are certified and collected. The city council may specify an additional penalty for such special assessment collections.
- (b) This section provides an alternative means of enforcement of the terms of this ordinance, and nothing in this section shall be construed in such a way as to limit or restrict the city's right to pursue available remedies under other law, including civil or criminal proceedings, as may be applicable.

(Code 1985, § 4.30(10)(F))

Sec. 10-97. Violation a misdemeanor.

Violation of this article shall constitute misdemeanors unless otherwise stated in specific provisions.

(Code 1985, § 4.99)

Chapter 12 BUSINESSES¹⁰

ARTICLE I. IN GENERAL

Sec. 12-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means any person making an application for a license under this chapter.

Application means a form with blanks or spaces thereon, to be filled in and completed by the applicant as his request for a license, furnished by the city and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.

Bond means a corporate surety document in the form and with the provisions acceptable and specifically approved by the city attorney.

Business means any activity, occupation, sale of goods or services, or transaction that is either licensed or regulated, or both licensed and regulated, by the terms and conditions of this chapter.

License means a document issued by the city to an applicant permitting him to carry on and transact a business.

License fee means the money paid to the city pursuant to an application and prior to issuance of a license to transact and carry on a business.

Licensee means an applicant who, pursuant to his application, holds a valid, current, unexpired and unrevoked license from the city for carrying on a business.

Sale, sell and sold means all forms of barter and all manner or means of furnishing merchandise to persons.

(Code 1985, § 6.01)

¹⁰Editor's note(s)—Business activities associated with alcoholic beverage establishments (chapter 4), body art and piercing establishments (chapter 8), and tobacco sales and distribution operations (chapter 44) are addressed separately in the chapters indicated.

State law reference(s)—Business licensing and regulation generally, M.S.A. § 116J.70 et seq.; restraint of trade, M.S.A. ch. 325D.

Sec. 12-2. Violations constitute misdemeanors.

Violations of this chapter shall constitute misdemeanors unless and except as otherwise stated in specific provisions hereof.

(Code 1985, § 6.99)

Secs. 12-3—12-22. Reserved.

ARTICLE II. LICENSES

Sec. 12-23. Applicability; scope.

This article applies to all businesses within the city that are required to be licensed under this section except as may be otherwise provided for individual businesses specifically in this or other chapters of this Code.

Sec. 12-24. Application for initial and renewal licenses; review and investigation.

All applications for licensing under this article shall be made at the office of the administrator upon forms that have been furnished by the city for such purposes. Unless otherwise provided for in this article, all such applications must be subscribed, sworn to, and include such information as the council has deemed necessary considering the nature of the business for which license application is made. Applications for renewal licenses may be made in such abbreviated form as the council may by resolution adopt.

(Code 1985, § 6.02(1), (2), (5))

Sec. 12-25. False information prohibited; penalty for violation.

It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in such application, or any willful omission to state any information called for on such application form, shall, upon discovery of such falsehood work an automatic refusal of license, or if already issued, shall render any license or permit issued pursuant thereto, void, and of no effect to protect the applicant from prosecution for violation of this chapter, or any part hereof.

(Code 1985, § 6.02(3))

Sec. 12-26. Review and investigation.

The administrator shall, upon receipt of each application completed in accordance herewith, investigate forthwith the truth of statements made therein, including, but not limited to, verification of prior revocations of any permit or license, criminal history, and complaints with governmental agencies, Internet sites, or the Better Business Bureau. For such investigation, the administrator may enlist the aid of the police chief.

(Code 1985, § 6.02(4))

Sec. 12-27. Grant or denial of application; appeal.

- (a) The administrator shall grant any qualified application for the period of the remainder of the then current calendar year or for the entire ensuing license year. Failure to pay any portion of a fee when due shall be cause for revocation. No license fee shall be refundable upon revocation or voluntarily ceasing to carry on the licensed activity.
- (b) The administrator may deny an application for false statements, incomplete information, criminal history or complaints with the Better Business Bureau or other similar consumer websites. Any denial may be appealed to the city council, provided a written request for review is filed within ten days following service of the denial.

(Code 1985, § 6.03(1))

Sec. 12-28. Issuance.

If an application is approved, the administrator shall issue a license pursuant thereto in the form prescribed by the council, upon payment of the appropriate license fee and approval of any required bond or insurance as to form and surety or carrier.

(Code 1985, § 6.03(2))

Sec. 12-29. Term; fees; proration of fees; included locations.

- (a) All licenses shall be on a calendar year basis and shall expire on December 31. Unless otherwise specified, license fees shall be prorated on the basis of one-twelfth for each calendar month or part thereof remaining in the then current license year. Annual license fees shall be in the amount provided in the city fee schedule.
- (b) Except as to licenses which are specifically city-wide, licenses shall be valid only at one location and on the premises therein described.

(Code 1985, § 6.03(2))

Sec. 12-30. Transfer between persons or from one location to another.

A license shall be transferable between persons upon consent of the council. No license shall be transferable to a different location without prior consent of the council and upon payment of the fee for a duplicate license. It is unlawful to make any transfer in violation of this section.

(Code 1985, § 6.03(3))

Sec. 12-31. Termination.

Licenses shall terminate only by expiration, revocation or abandonment.

(Code 1985, § 6.03(4))

Sec. 12-32. Revocation grounds and procedure.

The city council may revoke a license issued under this chapter for any reasonable cause. Before revocation, the council shall give notice to the licensee and grant such licensee opportunity to be heard. Notice to be given and the exact time of hearing shall be stated in the resolution calling for such hearing. Grounds for revocation include, but are not limited to, the following:

- (1) That the licensee suffered or permitted illegal acts upon licensed premises;
- (2) That the licensee had knowledge of such illegal acts but failed to report the same to police;
- (3) That the licensee failed or refused to cooperate fully with police in investigating such alleged illegal acts; or
- (4) That the activities of the licensee created a serious danger to public health, safety, or welfare.

(Code 1985, § 6.03(5))

Sec. 12-33. Duplicate license.

Duplicates of all original licenses may be issued by the administrator, without action by the council, upon licensee's affidavit that the original has been lost, and upon payment of a fee in the amount provided in the city fee schedule for issuance of the duplicate. All duplicate licenses shall be clearly marked duplicate.

(Code 1985, § 6.03(6))

Sec. 12-34. Conditional licenses.

Notwithstanding any provision of law to the contrary, the council may, upon a finding of the necessity therefor, place such conditions and restrictions upon a license as it, in its discretion, may deem reasonable and justified.

(Code 1985, § 6.08)

Sec. 12-35. Renewal of licenses.

Applications for renewal of an existing license shall be made at least 60 days prior to the date of expiration of the license and shall contain such information as is required by the city. This time requirement may be waived by the council for good and sufficient cause.

(Code 1985, § 6.09)

Sec. 12-36. Carrying or posting.

All solicitors shall at all times, when so engaged, carry their license on their person. All other licensees shall post their licenses in their place of business near the licensed activity. All licensees shall display their licenses upon demand by any officer or upon proper inquiry by any citizen.

(Code 1985, § 6.05)

Sec. 12-37. Property owner prohibited from allowing unlicensed business use of property.

It is unlawful for any person to knowingly permit any real property owned or controlled by him to be used, without a license, for any business for which a license is required by this chapter.

(Code 1985, § 6.06)

Sec. 12-38. Licensee liable for conduct of agents and employees.

The conduct of agents or employees of a licensee, while engaged in performance of their duties for their principal or employer under such license, shall be deemed the conduct of the licensee.

(Code 1985, § 6.07)

Sec. 12-39. Insurance requirements.

Whenever insurance is required by a section of this chapter, after approval by the council, but before the license shall issue, the applicant shall file with the administrator a policy or certificate of public liability insurance showing) that the limits are at least as high as required, that coverage is effective for at least the license term approved, and that such insurance will not be cancelled or terminated without 30 days' written notice served upon the administrator. Cancellation or termination of such coverage shall be grounds for license revocation.

(Code 1985, § 6.10)

Sec. 12-40. License denial after hearing.

The council may deny any application for a license to operate any business licensed or regulated under this chapter or other chapters of this Code. The council may consider the location of such business in making such determination. Before making such determination, the council shall hold a public hearing pursuant to notice to interested parties and the public as it may deem necessary or proper.

(Code 1985, § 6.11(1))

Sec. 12-41. Hearing before council on license denial or rates fixed.

Any applicant or licensee under this article who challenges denial of a license or rates fixed or approved by the council shall have a right to a hearing before the council upon written request therefor. Notice of time, place and purpose of such hearing shall be given to such persons and by such means as the council may determine in calling the hearing.

(Code 1985, § 6.11(3))

Secs. 12-42—12-70. Reserved.

ARTICLE III. PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS¹¹

Sec. 12-71. Purpose and intent.

- (a) This article is not intended to in any way hinder, delay or interfere with legitimate business or organizational activities. The council finds, however, that peddlers, solicitors, and transient merchants have used public streets and their direct contact with residents of the city for the illegitimate solicitation practices of harassment, nuisance, theft, deceit, or menacing, troublesome or unlawful activities. This article is intended to ferret out and control:
- (1) Businesses and organizations using solicitation as a means of concealing unlawful activities;
 - (2) Businesses and organizations which, though its activities be lawful or even commendable, use such illegitimate practices in solicitation; and
 - (3) Individual natural persons who, though they represent lawful businesses and organizations, use such illegitimate solicitation practices.
- (b) The council further finds that a large number of the residents of the city are employed as their livelihood and means of support by manufacturing plants and other businesses on shifts rotating between night and day, and to disturb them during their sleeping hours for the purpose of solicitation is a source of nuisance or even harassment and should be subject to control.
- (c) To protect the public's health, safety, and welfare, the city deems it necessary to regulate these practices through a registration process.

(Code 1985, § 6.36(1))

Sec. 12-72. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Established place means real estate in the city owned, leased on a month-to-month or term-certain longer than 30 days. The term "established place" includes a booth, compartment, or area leased or assigned during and for the length of an event or occasion.

Goods means wares, products, merchandise or any other tangible thing of value, such goods used at the time of sale or subsequently in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof whether or not severable therefrom. The term "goods" also includes merchandise certificates or coupons, issued by a retail seller, not redeemable in cash and to be used in their face amount in lieu of cash, in exchange for goods or services sold by such seller.

Peddler means a person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement, for the purpose of offering for sale, displaying for sale, selling or

¹¹State law reference(s)—Peddlers and transient merchants, M.S.A. ch. 329; county license required, M.S.A. § 329.10; municipal authority to regulate peddlers and transient merchants, M.S.A. §§ 329.15, 437.02.

attempting to sell, for immediate delivery, the goods or services that the person is carrying or otherwise transporting.

Professional fund raiser means a person who, for compensation, performs any solicitations or other services for a religious, political, social or other charitable organization.

Services means work, labor, or services of any kind.

Solicitor means a person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement, for the purpose of obtaining or attempting to obtain orders for the sale of goods, merchandise, subscriptions or services for future delivery or seeks donations for any organization by the means of going door-to-door.

Transient merchant means a person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty storefront for the purpose of exposing for sale, selling or attempting to sell goods, who does not remain in any one location for more than 14 consecutive days. The term "transient merchant" does not include a person who sells or attempts to sell goods on property which the person owns or legally occupies.

(Code 1985, § 6.36(2))

Sec. 12-73. Prohibited practices.

It is unlawful for any solicitor, peddler or transient merchant to do any of the following:

- (1) Engage in solicitation, peddling or transient merchandising for any unlawful business or organizational purpose or activity.
- (2) Engage in harassment, nuisance, theft, deceit, or menacing, troublesome or otherwise operate their business in any manner that a reasonable person would find obscene, threatening, intimidating or abusive.
- (3) Enter, or attempt to gain entrance, to residential premises displaying at such entrance a sign prohibiting solicitation.
- (4) Refuse to leave any premises when requested by the owner, lessee, or person in charge thereof. It is unlawful for any transient merchant to sell or attempt to sell on private property without the written consent of the owner of record of the property.
- (5) Engage in any activity constituting that of a solicitor, peddler or transient merchant without first obtaining a permit or being registered with the city as herein provided.
- (6) Fail to carry a permit or certificate of registration when engaging in sales activity.
- (7) Obstruct the free flow of either vehicle or pedestrian traffic on any street, sidewalk, or other public right-of-way.
- (8) Conduct any sales activity between 8:00 p.m. and 8:00 a.m., except that a transient merchant may do so if expressly authorized under the permit.
- (9) Use amplifying devices, bells, horns, whistles, or other unreasonably loud means of calling attention to his business or the items to be sold.
- (10) Make any false or misleading statements about the products or services being sold, including untrue statements of endorsement.
- (11) Claim to have the endorsement of the city solely based on the city having issued a permit or certificate of registration to that person.

(Code 1985, § 6.36(3))

Sec. 12-74. Peddler or transient merchant permit or solicitor registration required.

Except as otherwise provided in this article, no person shall conduct business within city limits as a peddler or a transient merchant without first obtaining a permit. Solicitors need not be licensed, but are required to register with the city. The permit or certificate of registration shall be carried by the person while conducting sales or solicitation activities and shall be shown to residents or police officer upon demand.

(Code 1985, § 6.36(4)(A))

Sec. 12-75. Application content; fees; time for making.

- (a) Applications for a permit or certificate of registration shall contain the name and address of the person to be conducting the activity, the name and address of the business or organization for which the permit or certificate of registration is sought, and such other information as may reasonably be required by the council as a condition to registration or permitting or to permit investigation into the applicant's background and past solicitation and business practices.
- (b) The application shall be signed by the applicant and shall be accompanied by the fees established in the city fee schedule.
- (c) All applications shall be made at least 14 days prior to conducting any business or solicitation activities.

(Code 1985, § 6.36(5))

Sec. 12-76. Investigation, approval or denial; grounds for denial.

- (a) The administrator shall approve or disapprove the requested permit or certificate of registration. The administrator shall conduct a background check on all individuals listed on the application. The following shall be grounds for denying an application:
 - (1) Failure of an applicant to truthfully provide any information requested by the city as part of the application process.
 - (2) Failure of the applicant to pay any required fee.
 - (3) Having one or more prior revocations of a certificate of registration, permit or license.
 - (4) Having one or more prior convictions for violation of any federal or state law or regulation or of any local ordinance which adversely reflects upon his ability to conduct the business for which the permit or certificate of registration is sought.
 - (5) Having one or more prior complaints with the city, Better Business Bureau, state attorney general, or other similar business or consumer rights office.
- (b) The applicant may appeal the denial of the application to the city council in the same manner as appeals for suspension or revocation as provided in section 12-27.

(Code 1985, § 6.36(6))

Sec. 12-77. Suspension or revocation.

- (a) *Grounds.* Any permit or certificate of registration issued under this article may be suspended or revoked at the discretion of the city for fraud, misrepresentation or incorrect statements on the application form or for violation of any provision of this article.

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- (b) *Notice of violation.* Prior to revoking or suspending any permit or certificate of registration, the city shall provide the holder with a written notice of the alleged violation. Notice shall be delivered in person or by mail to the address listed on the permit application. For the purpose of mailed notice, service shall be considered complete as of the date the notice is placed in the mail.
 - (c) *Public hearing.* Upon receiving the notice of violation, the holder may request a public hearing before the city council to review the suspension or revocation. If no request for a hearing is received by the city administrator within ten days following the service of the notice, the revocation or suspension shall be final. If a public hearing is requested within the time frame, a hearing shall be scheduled at the next available city council meeting. The council shall notify the holder of its decision within five business days of the hearing.
 - (d) *Emergency suspension prior to notice.* If in the discretion of the city administrator, imminent harm to the health or safety of the public may occur because of the actions of a permit or certificate of registration holder under this section, the city may immediately suspend the permit or certificate of registration and provide notice of the right to a subsequent public hearing.

(Code 1985, § 6.36(7))

Sec. 12-78. Transfer.

No permit or certificate of registration shall be transferred to any other person other than the person to whom it was issued. Each individual person conducting activities for any organization must obtain a separate permit or certificate of registration.

(Code 1985, § 6.36(8))

Secs. 12-79—12-99. Reserved.

ARTICLE IV. MOVING, CLOSE-OUT AND SIMILAR SALES¹²

Sec. 12-100. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Damaged goods sale means offering for sale to the public all or part of the regular inventory of an established business, which inventory has been damaged or altered by fire, smoke, water or other casualty.

Established business means a retail establishment in the city which offers for sale goods, wares or merchandise of the same or related kinds to the public at a fixed location.

Fixed location means an immobile, non-transient, permanent location upon real estate in the city which is either owned by the established business or its owner or leased on a month-to-month term or leased on a term-certain lease for a period longer than 30 days.

Moving or permanently terminating business sale means offering for sale to the public all or part of the regular inventory of an established business which is either moving from one location in the city to another

¹²State law reference(s)—Similar provisions, M.S.A. § 329.12.

location in the city, moving out of the city, or permanently terminating business, whether such termination is voluntary or involuntary on the part of the owner.

Regular inventory means any goods, wares or merchandise which was the stock-in-trade of the established business before the sale. The term "regular inventory" does not include goods, wares or merchandise purchased, imported or offered for the first time at the sale.

Sale offering for sale means any manner of transferring or attempting to transfer title to goods, wares or merchandise, whether by auction or otherwise; provided, however, that the term "sale or offering for sale" does not apply to the sale or attempted sale of the household goods or similar property used around the home or person of the owner, by the owner, the owner's legal representative, heirs-at-law or devisees, on residential property by auction or other means.

Temporary sale means a sale other than a damaged goods or a moving or permanently terminating business sale on premises neither owned by the applicant nor leased for a period of at least six months.

(Code 1985, § 6.41(1))

Sec. 12-101. Prohibition.

It is unlawful for any person to conduct a damaged goods, temporary sale, or moving or permanently terminating business sale except from a fixed location and for a period of time not exceeding 60 days.

(Code 1985, § 6.41(6))

Sec. 12-102. Conduct of sale.

No person conducting a sale under this article shall:

- (1) Make any additions whatsoever, during the period of the licensed sale, to the stock of goods set forth in the inventory attached to the application for license.
- (2) Employ any untrue, deceptive or misleading advertising.
- (3) Conduct the licensed sale except in strict conformity with any advertising or holding out incident thereto.

(Code 1985, § 6.41(7))

Secs. 12-103—12-127. Reserved.

ARTICLE V. MOBILE FOOD SALES

Sec. 12-128. Purpose and intent.

The purpose this article is to protect the public health, manage potential conflicting uses of the public property and right-of-way, and minimize unfair competition with fixed-site food vendors in the community.

(Code 1985, § 6.43(1))

Sec. 12-129. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Exempt vendor means a vendor who meets the requirements of exemption in this article.

Fixed-site food vendor means a fixed-site food vendor is an establishment engaged in the business of selling prepared, ready-to-eat foods to the public at a fixed location and from a permanent building, such as a restaurant, cafe, or similar establishment.

Mobile food unit means a food and beverage service establishment that is either:

- (1) Motorized or trailered, operating no more than 21 days annually at any one place, or operating more than 21 days annual at any one place with the approval of the city;
- (2) Operated in conjunction with a permanent business licensed under M.S.A. ch. 157 or 28A at the site of the permanent business by the same individual or company, and readily movable, without disassembling, for transport to another location; or
- (3) When in conformance with all of the provisions of this article, is eligible to operate on public property or right-of-way or private property, whether such food is prepared in the vehicle or another site, and whether such food is sold while the vehicle is located on public property, right-of-way or private property.

(Code 1985, § 6.43(2))

Sec. 12-130. Permit required.

No person shall sell or advertise for sale prepared food from a mobile food unit within the city on public property or right-of-way or private property without having first received a permit under the section. Permits may be issued on a daily or annual basis. The fees for each type of permit shall be as provided in the city fee schedule.

(Code 1985, § 6.43(3))

Sec. 12-131. Eligibility requirements.

- (a) The city will issue a permit to certain mobile food units selling foods from a vehicle mounted unit, either motorized or trailered. Applicants for a mobile food unit permit shall be otherwise exempt from the requirements of this chapter regulating peddlers, solicitors, and transient merchants.
- (b) Anyone selling food for public consumption in any way that is not in conformity with the provisions of this article shall not be considered a permitted mobile food unit.
- (c) No applicant shall receive a mobile food unit permit under this section who has not first received a license from the state health department or department of agriculture authorizing such sales. Any conditions of the state health department or department of agriculture shall be incorporated into the permit issued under this section, in addition to any other conditions imposed by the city.
- (d) The applicant shall provide the information required on the official city application form for mobile food unit and shall be in compliance with all requirements as may be specified on the form and in this article.

(Code 1985, § 6.43(1), (4))

Sec. 12-132. Investigation; permit approval or denial; grounds for denial; appeal.

- (a) The administrator shall approve or deny each permit application after conducting a background check on all individuals listed on the application. The following shall be grounds for denying a permit:
 - (1) Failure of an applicant to truthfully provide any information requested by the city as part of the application process.
 - (2) Failure of the applicant to pay any required fee.
 - (3) Having one or more prior revocations of a permit or license.
 - (4) Having one or more prior convictions for violation of any federal or state law or regulation or of any local ordinance which adversely reflects upon his ability to conduct the business for which the permit is sought.
 - (5) Having one or more prior complaints with the city, Better Business Bureau, state attorney general, or other similar business or consumer rights office.
- (b) The applicant may appeal the denial of the permit application to the city council in the same manner as appeals for suspension or revocation as provided in section 12-27.

(Code 1985, § 6.43(7))

Sec. 12-133. Transferability.

Permits issued under this article are not transferrable.

(Code 1985, § 6.43(9))

Sec. 12-134. Suspension or revocation.

- (a) *Grounds.* Any permit issued under this article may be suspended or revoked at the discretion of the city for fraud, misrepresentation or incorrect statements on the application form or for violation of any provision of this article.
- (b) *Notice of violation.* Prior to revoking or suspending any permit, the city shall provide the holder with a written notice of the alleged violation. Notice shall be delivered in person or by mail to the address listed on the permit application. For the purpose of mailed notice, service shall be considered complete as of the date the notice is placed in the mail.
- (c) *Public hearing.* Upon receiving the notice of violation, the holder may request a public hearing before the city council to review the suspension or revocation. If no request for a hearing is received by the city administrator within ten days following the service of the notice, the revocation or suspension shall be final. If a public hearing is requested within the time frame, a hearing shall be scheduled at the next available city council meeting. The council shall notify the holder of its decision within five business days of the hearing.
- (d) *Emergency suspension prior to notice.* If in the discretion of the city administrator, imminent harm to the health or safety of the public may occur because of the actions of a permit holder under this section, the city may immediately suspend the permit or registration and provide notice of the right to a subsequent public hearing.

(Code 1985, § 6.43(8))

Sec. 12-135. Operation restrictions.

All vendors holding a license under this article shall comply with the following operation restrictions:

- (1) No external signage, other than such signage directly attached to the vehicle, may be utilized.
- (2) No external seating may be utilized.
- (3) No other equipment may be utilized that is not wholly contained within the vehicle.
- (4) No sound amplifying equipment, nor video, lights, or noisemakers may be utilized in the operation of the mobile food unit.
- (5) Any generator in use must be self-contained and fully screened from view.
- (6) Operations shall be limited to the number of days indicated on the applicant's state license, and in no case, shall exceed the time frame specified in the permit.
- (7) Applicant shall provide waste disposal for litter and garbage generated by the operation of the mobile food unit and shall clean all such litter and garbage before moving from the location.
- (8) The mobile food unit shall obey the orders of any traffic control officer, peace officer, or inspector, and shall be open to inspection during all open hours.
- (9) Vehicle size shall not exceed 13 feet in height or 35 feet in length.
- (10) Hours of operation shall be from 8:00 a.m. and 10:00 p.m.
- (11) There shall be no overnight parking of mobile food units on public property or right-of-way.
- (12) Mobile food units may not be kept in residential zoning districts.

(Code 1985, § 6.43(5))

Sec. 12-136. Permissible vending locations.

Vendors holding a license under this article may operate in compliance with the following location restrictions:

- (1) A properly permitted mobile food unit may operate on public streets when occupying no more than two parallel parking spaces.
- (2) In no cases, shall a mobile food unit operate in a traffic lane, on a sidewalk, or in any location which causes an obstruction to traffic.
- (3) No mobile food unit may operate on a public street within 50 feet of the intersection of two streets or within 30 feet of the intersection of a public street and private driveway opening.
- (4) A mobile food unit may occupy up to two spaces within a public parking lot.
- (5) A mobile food unit may operate within a private parking lot with written permission of the property owner or owner's authorized representative.
- (6) No mobile food unit shall operate within 50 feet of an existing restaurant located within the city.
- (7) No mobile food unit shall operate at a public event during any time if a concession stand is being operated without the prior approval of the city.
- (8) Right-of-way and public parking lot locations are available on a first come-first served basis.

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- (9) No mobile food unit shall operate on any unpaved area within public property without the prior approval of the city.

(Code 1985, § 6.43(6))

Secs. 12-137—12-179. Reserved.

ARTICLE VI. ADULT BUSINESSES¹³

Sec. 12-180. Definitions.

The definitions related to adult uses set forth in section 50-3 shall apply to this article.

(Code 1985, § 6.39(1))

Sec. 12-181. License required for principal adult use; term of license.

- (a) It is unlawful for any person to operate a principal adult use in the city without having first obtained a license as provided in this article. No license shall be required for an accessory adult use.
- (b) Licenses issued under this article shall be for a period of one year, and all such licenses shall expire on December 31 of each year.

(Code 1985, § 6.39(2))

Sec. 12-182. Applications.

In addition to such additional information as the city administrator may require, the application for a license under this article shall include:

- (1) The name, residence, telephone number and birthdate of the applicant, if an individual; and if a corporation, the names, residences, telephone number and birthdates of those owners holding more than five percent of the outstanding stock of the corporation;
- (2) The name, address, telephone number and birthdate of the manager of such operation, if different from the owners;
- (3) The premises wherein the adult use is to be located;
- (4) A statement detailing each gross misdemeanor or felony relating to a sex offense or the operation of adult uses and related activities of which the applicant or, in the case of a corporation, the owners of more than five percent of the outstanding stock of the corporation, have been convicted, and whether the applicant has ever applied for or held a license to operate a similar type of business in other communities;
- (5) The activities and types of business to be conducted;
- (6) The hours of operation;

¹³State law reference(s)—Adult entertainment establishments, M.S.A. § 617.242; ownership restriction on adult business establishments, M.S.A. § 609B.545.

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- (7) The provisions made to restrict access by minors; and
 - (8) A building plan of the premises detailing all internal operations and activities.

(Code 1985, § 6.39(3))

Sec. 12-183. License fees; refunds.

- (a) Each application for a license shall be accompanied with payment in full of the required fee for the license. Upon rejection of any applications for a license, the city shall refund the paid license fee but not the investigation fee, which is nonrefundable.
- (b) The annual license fee shall be as provided in the city fee schedule. If a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a pro rata fee. In computing such fee, any unexpired fraction of a month shall be counted as one month.
- (c) No part of the fee paid by any license issued under this section shall be refunded, except in the following instances upon notification to the city administrator within 30 days from the happening of the event. There shall be refunded a pro rata portion of the fee for the unexpired portion of the license, computed on a monthly basis, when operation of the licensed business ceases not less than one month before expiration of the license because of:
 - (1) Destruction or damage of the licensed premises by fire or other catastrophe.
 - (2) The licensee's disabling illness.
 - (3) The licensee's death.
 - (4) A change in the legal status making it unlawful for the licensed business to continue.

(Code 1985, § 6.39(4))

Sec. 12-184. Authority of city administrator.

The city administrator shall investigate all facts set out in the application. Opportunity shall be given to any person to be heard for or against the granting of the license. After such investigation and administrative hearing, the city administrator shall grant or refuse the application subject to appeal to the council.

(Code 1985, § 6.39(5))

Sec. 12-185. License not transferable to different licensee or licensed premises.

Each license shall be issued to the applicant only and shall not be transferable to another holder. Each license shall be issued only for the premises described in the application. No license may be transferred to another place without the approval of the city administrator subject to appeal to the council.

(Code 1985, § 6.39(5))

Sec. 12-186. Persons ineligible for license.

No license shall be granted to or held by any person who is under 21 years of age, who has been convicted of a felony or of violating any law of the state or provision of this Code relating to sex offenses or adult uses, or who is not the proprietor of the establishment for which the license is issued.

(Code 1985, § 6.39(6))

Sec. 12-187. Places ineligible for license.

No license shall be granted for adult uses on any premises where a licensee has been convicted of a violation of this article, or where any license hereunder has been revoked for cause, until one year has elapsed after such conviction or revocation. No license shall be granted for any adult use which is not in compliance with the city's zoning regulations.

(Code 1985, § 6.39(7))

Sec. 12-188. Conditions of license.

- (a) *Generally.* Every license shall be granted subject to the conditions in this article and to compliance with this article, other applicable sections of this Code, and state law.
- (b) *Display of license required.* All licensed premises shall have the license posted in a conspicuous place at all times.
- (c) *Minors prohibited; exception.* In the case of an adult use, principal, no minor shall be permitted on the licensed premises unless accompanied by his parent or legal guardian.
- (d) *City's right to inspect.* Any designated inspection officer of the city shall have the unqualified right to enter, inspect, and search the premises of a licensee during business hours within a search and seizure warrant.
- (e) *Responsibility of licensee.* Every licensee shall be responsible for the conduct of his place of business and shall maintain conditions of order.

(Code 1985, § 6.39(8))

Secs. 12-189—12-214. Reserved.

ARTICLE VII. GAMBLING OPERATIONS

Sec. 12-215. Adoption of state law by reference; definitions.

- (a) The provisions of M.S.A. ch. 349 with reference to the definition of terms, conditions of operation, provisions relating to sales, and all other matters pertaining to lawful gambling are hereby adopted by reference and are made a part of this article as if set out in full.
- (b) In addition to the adopted definitions, as used in this article, the term "board" means the state gambling control board.

Sec. 12-216. Purpose and intent.

- (a) The provisions of M.S.A. ch. 349 provide for and regulate the conduct of lawful gambling. Pursuant to its provisions, the city may altogether prohibit lawful gambling within the boundaries of its jurisdiction, or the city may provide for more stringent local regulations pertaining to lawful gambling.

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- (b) The city recognizes that the proceeds organizations derive from their lawful gambling activities can provide a benefit to the city and its residents. The city also recognizes that excessive expenditure of personal resources on lawful gambling can have a deleterious effect on individuals and families.
 - (c) It is the purpose of this section to regulate lawful gambling activities within the city to prevent its commercialization, to ensure the integrity of operations, and to provide for the use of net profits only for lawful purposes. M.S.A. ch. 349 is incorporated by reference and its provisions are intended to supplement the regulations contained in this section.

Sec. 12-217. Lawful gambling permitted.

There shall be no gambling in the city except as authorized pursuant to the provisions of M.S.A. ch. 349 and rules promulgated thereunder, this chapter, and all applicable federal laws and regulations. No person may conduct gambling within the city without first either securing a gambling license and a premises permit from the state gambling control board ("board") with a resolution from the city council approving the premises permit or securing an exempt or excluded permit from the board with approval from the city clerk.

Sec. 12-218. Premises permit requirements and procedure.

- (a) *Application and supporting documentation.* In order to obtain city council approval of a premises permit, an organization shall file an application with the city clerk. The application shall include a complete and executed duplicate of the application filed with the board, including all exhibits and accompanying documents, any additional information requested by the city, and the application fee set forth in the city fee schedule.
- (b) *Qualifications.* No premises permit shall be approved by the city unless the organization qualifies under M.S.A. § 349.16(2) the organization has a least 25 active dues-paying members; and the organization has either been duly incorporated in the state as a nonprofit organization for the most recent five years or has been recognized by the federal internal revenue service as exempt from income taxation for the most recent three years.
- (c) *Premises criteria.* The city shall approve of a premises permit only for the organization's hall where it conducts its regular meetings or for a licensed on-sale liquor, wine or malt liquor establishment. No location within the city may have more than one premises permit approved. No premises permit shall be approved by the city unless the premises complies with the applicable zoning, building, fire and health codes of the city.
- (d) *Approval or denial generally.* Except for exempt or excluded permits, each pending application for a premises permit shall be approved or denied by a resolution of the city council within 60 days of receipt of a completed application. It is within the sole discretion of the city to determine whether an application is complete.
- (e) *Approval or denial of exempt or excluded permits.* Each pending application for a premises permit shall be approved or denied by a resolution of the city clerk within 15 days of receipt of a completed application. It is within the sole discretion of the city to determine whether an application is complete.

Sec. 12-219. Changes in application information and data must be reported.

An organization holding a premises permit must notify the city in writing within ten days whenever any material change is made in the information provided with the application. Said information shall be forwarded to the city clerk.

Sec. 12-220. Bingo and raffles.

Bingo and raffles shall follow the rules explicitly stated in state law.

Sec. 12-221. Inspection.

All gambling within the city occurring subject to a premises, exempt or excluded permit shall be open to the inspection by the city.

Sec. 12-222. Expenditures for lawful purposes.

- (a) Each organization licensed to conduct lawful gambling within the city pursuant to M.S.A. § 349.16 must contribute ten percent of its net profits derived from lawful gambling in the city to a fund administered and regulated by the city without cost to the fund. The city shall disburse the funds for charitable contributions as defined by M.S.A. § 349.12(7a).
- (b) Each organization licensed to conduct lawful gambling within the city must expend 66 percent of its expenditures on lawful purposes conducted or located within the city's local trade area. The city's local trade area is defined as the entire city limits and Buffalo, Marysville, Rockford, and Chatham Townships. This 66 percent of its expenditures shall be in addition to the ten percent of its net profits contributed to the city pursuant to M.S.A. § 349.213(1)(g).
- (c) Payment under this section shall be made quarterly with payment due within 30 days of the end of the quarter. Trade area reports are required to be submitted annually in advance of the application for renewal of license with the board. The city's use of such funds shall be determined at the time of adoption of the city's annual budget or when the budget is amended.

Sec. 12-223. Records and reporting.

- (a) Organizations conducting lawful gambling shall file with the city one copy of all records and reports required to be filed with the board, pursuant to M.S.A. ch. 349 and rules adopted pursuant thereto, as they may be amended from time to time. The records and reports shall be filed on or before the day they are required to be filed with the board.
- (b) Organizations licensed by the board shall file a report with the city proving compliance with the trade area spending requirements imposed by this article. Such report shall be made on a form prescribed by the city and shall be submitted annually.

Sec. 12-224. Hours of operation.

Lawful gambling shall not be conducted between 1:00 a.m. and 8:00 a.m. on any day of the week.

Sec. 12-225. Penalty.

Any person who violates any provision of this article, M.S.A. §§ 609.75—609.763 or 349.11—349.21, or any rules promulgated under those sections shall be guilty of a misdemeanor and subject to a fine of not more than \$1,000.00 or imprisonment for a term not to exceed 90 days, or both, plus in either case the costs of prosecution. In addition, violations shall be reported to the board and recommendation shall be made for suspension, revocation, or cancellation of an organization's license.

Sec. 12-226. Enforcement responsibility.

Nothing in this section shall be construed to require the city to undertake any responsibility for enforcing compliance with M.S.A. ch. 349 other than those provision related to the issuance of premises permits as required by M.S.A. § 349.213.

Chapter 14 EMERGENCY MANAGEMENT AND SERVICES¹⁴

ARTICLE I. IN GENERAL

Sec. 14-1. Interim emergency succession.

- (a) *Purpose.* Due to the existing possibility of a nuclear attack or a natural disaster requiring a declaration of a state of emergency, it is found urgent and necessary to ensure the continuity of duly elected and lawful leadership of the city to provide for the continuity of the government and the emergency interim succession of key governmental officials by providing a method for temporary emergency appointments to their offices.
- (b) *Succession to local offices.* In the event of a nuclear attack upon the United States or a natural disaster affecting the vicinity of the city, the mayor, council and administrator shall be forthwith notified by any one of the persons and by any means available to gather at the city hall. In the event that safety or convenience dictate, an alternative place of meeting may be designated. Those gathered shall proceed as follows:
 - (1) By majority vote of those persons present, regardless of number, they shall elect a chairperson and secretary to preside and keep minutes, respectively.
 - (2) They shall review and record the specific facts relating to the nuclear attack or natural disaster and injuries to persons or damage to property already done, or the imminence thereof.
 - (3) They may, based on such facts, declare a state of emergency.
 - (4) By majority vote of those persons present, regardless of number, they shall fill all positions on the council (including the office of mayor) of those persons upon whom notice could not be served or who are unable to be present.
 - (5) Such interim successors shall serve until such time as the duly elected official is again available and returns to his position, or the state of emergency has passed and a successor is designated and qualifies as required by law, whichever shall occur first.
- (c) *Duties of the interim emergency council.* The interim emergency council shall exercise the powers and duties of their offices and appoint other key government officials to serve during the emergency.

(Code 1985, § 2.11)

Secs. 14-2—14-20. Reserved.

¹⁴State law reference(s)—Minnesota Emergency Management Act, M.S.A. § 12.01 et seq.; emergency powers and duties of local emergency management organizations, M.S.A. § 12.21 et seq.; local organization director and director's duties, M.S.A. § 12.25; mutual aid arrangements, M.S.A. § 12.27; declaration of local emergency, M.S.A. § 12.29; emergency powers generally, M.S.A. § 12.31 et seq.

ARTICLE II. LOCAL EMERGENCY AGENCY

Sec. 14-21. Joint emergency management plan.

The city participates in a joint emergency management plan with the county entitled the "Wright County Emergency Plan." The plan, as amended from time to time, is adopted as though fully set forth in this article.

Chapter 16 ENVIRONMENT¹⁵

Sec. 16-1. Coal tar sealant.

The city adopts M.S.A. § 116.202 regarding coal tar sealant and will enforce the adopted regulations within the city.

Sec. 16-2. Conservation measures.

- (a) To conserve all water resources, which includes all groundwater and surface waters such as lakes, ponds and rivers as well as the city's water supply system, and allow the city's water system flexibility in meeting peak demands, certain limitations on the use of the water resources are hereby established as follows:
 - (1) An odd-even irrigation restriction based on street addresses is in effect from May 1 to October 1 each year. Property owners with odd-numbered addresses may water on odd calendar days, and property owners with even-numbered addresses may water on even calendar days.
 - (2) Homeowners' associations and apartment complexes that provide a common irrigation system shall irrigate only every other day. An irrigation system map must be provided to the city with GIS locations of irrigation taps.
 - (3) City water resources shall not be used for the purposes of irrigating or watering lawns, sod, or seeded areas between 7:00 a.m. and 7:00 p.m. daily.
- (b) Subsections (a)(1) through (3) of this section do not apply in the following situations:
 - (1) Limited hand watering of plants using a hose or handheld watering container.
 - (2) Irrigation of new landscaping, sod, or seed within 30 days of installation.
 - (3) Watering of vegetable and flower gardens.
- (c) Drilling wells within city limits is prohibited. Surface water irrigation systems may be used but must follow all state and local codes, including the conservation limitations set forth in subsections (a)(1) through (3). Irrigation systems must be separate and not cross connected with the city's potable water system.

¹⁵State law reference(s)—Environmental protection, M.S.A. § 114C.01 et seq.; Water Pollution Control Act, M.S.A. § 115.01 et seq.; Clean Water Legacy Act, M.S.A. § 114D.05 et seq.; Toxic Pollution Prevention Act, M.S.A. § 115D.01 et seq.

Chapter 18 FIRE PREVENTION, PROTECTION AND CONTROL¹⁶

ARTICLE I. IN GENERAL

Secs. 18-1—18-18. Reserved.

ARTICLE II. FIRE DEPARTMENT

Sec. 18-19. Established; fire chief.

The city council has established a volunteer fire department for the city headed by a fire chief who shall be a city employee. The size, composition and compensation of fire department personnel shall all be established by resolution of the council, which may be changed from time to time by subsequent resolution.

(Code 1985, § 2.32)

Sec. 18-20. Promulgation of rules and regulations.

The fire chief shall establish written rules and regulations for the department, subject to approval by the city council. A copy of which shall be distributed to each of its members.

(Code 1985, § 2.32)

Sec. 18-21. Appointment of members; terms.

- (a) The city council shall appoint the fire chief and two assistant fire chiefs to serve two-year terms. The terms of the assistant fire chiefs shall be staggered such that the term of one assistant fire chief expires each year.
- (b) The fire chief shall appoint captains and lieutenants within the department and such officers as he deems advisable subject to confirmation by the city council.
- (c) The fire chief, assistant fire chiefs, captains and lieutenants shall serve until their successor is appointed, unless otherwise removed for cause by the city council after a public hearing.

(Code 1985, § 2.32)

¹⁶State law reference(s)—Municipal authority to establish fire department and adopt ordinances to prevent, control and extinguish fires, M.S.A. § 412.221; administration and enforcement of state fire code, M.S.A. § 299F.011; municipal authority to establish fire regulations more stringent than state code, M.S.A. § 299F.011(4).

Sec. 18-22. Duties of fire chief.

The fire chief shall have general superintendence of the fire department and the custody of all property used and maintained for the purposes of the department. He shall see that the same are kept in proper order and that all rules and regulations and all provisions of the laws of the state and ordinances of the city relative to a fire department and to the prevention and extinguishment of fires are duly observed. He shall superintend the preservation of all property endangered by fire and shall have control and direction of all persons engaged in preserving such property.

(Code 1985, § 2.32)

Sec. 18-23. Absence or disability of fire chief.

In case of the absence or disability of the chief for any cause, one of the assistant chiefs shall be appointed by the city council and shall exercise all the powers, perform all the duties and be subject to all the responsibilities of the chief.

(Code 1985, § 2.32)

Sec. 18-24. Fire chief to submit periodic reports to the city council.

The fire chief shall submit a periodic report to the council covering the work of the department for intervals required by the council.

(Code 1985, § 2.32)

Secs. 18-25—18-51. Reserved.***ARTICLE III. FIRE REGULATIONS******DIVISION 1. GENERALLY*****Sec. 18-52. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Portable outdoor fireplace means a portable, outdoor, solid-fuel-burning fireplace that may be constructed of steel, concrete, clay or other noncombustible material. A portable outdoor fireplace may be open in design, or may be equipped with a small hearth opening and a short chimney or chimney opening in the top.

Recreational fire means an outdoor fire burning materials other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, portable outdoor fireplace, barbeque grill or barbeque pit and has a total fuel area of three feet or less in diameter and two feet or less in height for pleasure, religious, ceremonial, cooking, warmth or similar purposes.

Sec. 18-53. State fire code adopted.

The 2020 state fire code published by the International Code Council, as adopted pursuant to M.S.A. § 299F.011 and as modified by Minn. R. ch. 7511, together with appendix P of the state fire code, is adopted as though set forth in full in this section. One copy of said code shall be marked "City of Buffalo—Official Copy" and kept on file in the office of the administrator and open to inspection and use by the public.

(Code 1985, § 10.22; Ord. No. 2021-2 , 3-1-2021)

Sec. 18-54. Burning prohibited; exceptions; prairie grass burning by permit only.

Unless otherwise specifically provided in this chapter, no burning shall be permitted in the city except for recreational fires and prairie grass burning required for prairie restoration. A burning permit from the fire chief is required for all prairie grass burns.

Sec. 18-55. Recreational fires.

Recreational fires within the city shall be conducted only in compliance with the following:

- (1) Recreational fires must be at least 25 feet from all buildings or combustible materials. Combustible materials are things such as wood, paper, and plastics.
- (2) Conditions which could cause a fire to spread within 25 feet of a structure must be eliminated prior to ignition.
- (3) Recreational fires shall be located ten feet from LP-gas containers that are filled on site by the LP-gas company.
- (4) Recreational fires must be constantly attended until the fire is extinguished.
- (5) A minimum of one portable fire extinguisher complying with the state fire code, with a minimum 4-A rating or other approved on-site fire extinguishing equipment, shall be readily available at all times until the fire is extinguished. Examples of other approved fire extinguishing equipment would be a charged garden hose, dirt, or sand (and a means of applying it).
- (6) The only materials permitted in a recreational fire are wood from trees, small branches, brush, or charcoal. Burning of treated lumber materials, construction debris, garbage, plastic materials, or waste materials is not permitted.
- (7) Recreational fires must be immediately extinguished if they pose a fire safety risk, if they are not in compliance with this section, or when extinguishment is directed by the fire code official.
- (8) Recreational fires must be immediately extinguished if the smoke is a nuisance or there is a complaint from a neighboring property.

Sec. 18-56. Portable outdoor fireplaces.

Portable outdoor fireplaces may be used only in accordance with the manufacturer's instructions and shall not be operated within 15 feet of a structure or combustible material. They shall also comply with section 18-55(3) through (7) for recreational fires.

Sec. 18-57. Fires or barbecues on balconies or patios restricted.

- (a) *Restricted.* In any structure containing three or more dwelling units:

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- (1) It is unlawful for any person to kindle, maintain or cause any fire or open flame on any balcony above ground level or on any ground floor patio within 15 feet of any structure.
 - (2) It is unlawful for any person to store or use any fuel, barbecue, torch or other similar heating or lighting chemicals or devices on any balcony above ground level or on any ground floor patio within 15 feet of any structure.
- (b) *Exceptions.* Electric grills or gas fired barbecue grills which are permanently mounted, wired or plumbed to the building's gas supply or electrical system and maintained in the minimum clearance of 18 inches on all sides and may be installed on balconies and patios when approved by the fire chief.
- (Code 1985, § 10.23)

Secs. 18-58—18-87. Reserved.

DIVISION 2. FIREWORKS¹⁷

Sec. 18-88. Defined.

For the purposes of this division, fireworks has the meaning provided in M.S.A. § 624.20.

(Code 1985, § 10.24(1))

Sec. 18-89. Permit required for sale or possession.

- (a) No person shall manufacture, store for commercial purposes, or sell fireworks in the city without first having obtain a permit therefor pursuant to this section.
- (b) Application for permit under this section shall be submitted to the city fire chief on a form provided by the city together with a permit fee in the amount provided in the city fee schedule.
- (c) If the applicant is not the owner of the real property upon which the fireworks related activity will occur, the application shall also be accompanied by a letter from the person legally responsible for the real property giving permission or such activity.
- (d) If the fireworks activity will be carried out in whole or in part in a tent or tent structure, the application shall be accompanied by a certificate executed by an approved testing laboratory, certifying that the tent structure and all tarpaulins, floor coverings, bunting, combustible decorative materials and effects, including sawdust when used on floors or passageways:
 - (1) Are composed of flame-resistant material or treated with a flame retardant in an approved manner that ensures the retardant will be effective for the period specified by the permit; and
 - (2) Meet the requirements for flame resistance as determined in accordance with the Standard Methods of Fire Tests for Flame Propagation of Textiles and Films, NFPA 701, published by the National Fire Protection Association.

¹⁷State law reference(s)—Fireworks, M.S.A. § 624.20 et seq.; sale, possession and use of fireworks, M.S.A. § 624.21.

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- (e) Upon receipt of an application, the fire chief shall ensure that the proposed location and use of the property for the fireworks related activity is code compliant.
 - (f) The fire chief shall approve or deny the application with 14 days from the date it is submitted. Permits issued under this section shall be valid until the end of the calendar year.
 - (g) No permit shall be approved if the proposed location and activity would violate any provision of this Code, including provisions of the adopted fire code. In addition, no permit shall be approved if the applicant or the responsible property owner has been convicted of a felony or of a fireworks related misdemeanor within three years immediately preceding the date of the application for permit.

(Code 1985, § 10.24(2))

Sec. 18-90. Sale and storage restrictions.

In addition to all requirements imposed by any building and zoning regulations, fire codes and state law, the sale, storage and use of fireworks in the city shall be subject to the following restrictions:

- (1) *Zoning restrictions.* No manufacturing, sales or storage for commercial purposes shall occur on residentially zoned property or properties used for educational purposes or assemblies.
- (2) *Setback from fuel dispensers required.* No person shall sell or store fireworks within 100 feet of any fuel dispensing apparatus.
- (3) *Maximum gross weight of stored fireworks restricted.* In buildings that do not have an automated sprinkling system, retail sales displays of fireworks shall be limited to a gross weight of 400 pounds of fireworks. In buildings that do contain an automated sprinkling system, the quantity of fireworks contained in retail sales displays shall be determined by the fire chief on a case-by-case basis after considering the building's construction, fire suppression apparatus and other relevant factors. Manufacturing, warehouse buildings, or display of retail consumer fireworks in excess of a gross weight of 400 pounds shall be classified as an H occupancy and protected similarly to the protections required for explosives and aerosols.
- (4) *Exterior storage, display and sales prohibited.* No exterior storage, display, sales or transient sales of fireworks are permitted.
- (5) *List of stock to be available.* A list of all consumer fireworks displayed and stored on the property shall be available at all times. The list shall document the name, weight and quantity of the fireworks and be accompanied by the material safety data sheets.
- (6) *Smoking prohibited; signs required.* It shall be unlawful for any seller of any fireworks to permit smoking at any site containing fireworks. "No smoking" signs must be conspicuously posted and approved fire extinguishers must be available for use.
- (7) *Purchase by minors prohibited.* Only persons 18 years of age or older may purchase fireworks and the age of the purchaser must be verified by photographic identification.
- (8) *Written safety precautions to be provided to purchasers.* A handout describing safety precautions for fireworks shall be provided to each consumer purchasing fireworks.

(Code 1985, § 10.24(3))

Sec. 18-91. Tent use subject to additional restrictions.

- (a) *Defined.* As used in this section, the term "tent" or "tent structure" includes temporary membrane structures, tents, canopies, and air-supported or air-inflated structures.
- (b) *Standards and restrictions.* The sale and storage of fireworks in tents or tent structures is subject to the following, in addition to all other standards and restrictions provided in this article:
 - (1) *Location.* No tent structure used for the sale of fireworks shall be located within 20 feet of lot lines, buildings, other temporary membrane structures, other tents and canopies, parked vehicles or internal combustion engines. In determining required distances, support ropes and guy wires shall be considered part of the temporary membrane structure, tent or canopy.
 - (2) *Label.* The tent structure shall have a permanently affixed label bearing the identification of size and fabric or material type.
 - (3) *Certification.* An affidavit or affirmation shall be submitted to the fire chief and a copy retained on the premises on which the tent structure is located. The affidavit shall attest to the following information relative to the flame resistance of the fabric:
 - a. Names and address of the owners of the tent structure.
 - b. Date the fabric was last treated with flame resistant solution.
 - c. Trade name or kind of chemical used in treatment.
 - d. Name of person or firm treating the material.
 - e. Name of testing agency and test standard by which the fabric was tested.
 - (4) *Clearance.* There shall be a minimum clearance of at least three feet between the fabric envelope and all contents located inside the tent structure.
 - (5) *Fire extinguishers.* Fire extinguishers shall be provided as required in conspicuous locations where they will be readily accessible and immediately available for use. These locations shall be along normal paths of travel, unless the fire chief determines that the hazard presented indicates the need for placement away from normal paths of travel.
 - (6) *Exit openings.* Exit openings from tent structures shall remain open unless covered by a flame-resistant curtain that complies with the standards set forth in this section.
 - (7) *Curtains.* Curtains shall be free sliding on a metal support. The support shall be a minimum of 80 inches above the floor level at the exit. The curtains shall be so arranged that when open, no part of the curtain obstructs the exit. Curtains shall be of a color or colors that contrasts with the color of the tent structure.

(Code 1985, § 10.24(3))

Sec. 18-92. Use restrictions.

- (a) It is unlawful to use, fire or discharge any fireworks along the route of and during any parade, in any place of public assembly on any public property or in any commercial/industrial zoning district.
- (b) It is unlawful at any time to throw, toss or aim any fireworks at any person, animal, vehicle or other thing or object or used in any manner that may threaten or cause possible harm to life or property.
- (c) The discharge of fireworks shall be prohibited inside a building and within 15 feet of any building.

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- (d) The fire chief may ban fireworks if dry or windy conditions occur.
 - (e) Juveniles may not possess fireworks unless under the direct supervision of a responsible adult.
 - (f) Fireworks may not be discharged in such a manner that may create a nuisance, nor between the hours of 10:00 p.m. to 7:00 a.m.

(Code 1985, § 10.24(4))

Sec. 18-93. Violations; penalties and other remedies.

- (a) Materials which violate or pose a threat to public safety may be confiscated and destroyed. Costs associated with disposal shall be assessed back to the property owner or permit holder.
- (b) Violations of this division or state law may result in revocation of any permit issued under this division.
- (c) Violations of this division constitute misdemeanor offenses punishable as provided in section 1-11.

(Code 1985, § 10.24(5))

State law reference(s)—Illegal fireworks subject to seizure, M.S.A. § 624.24.

Chapter 20 HEALTH AND PUBLIC WELFARE

(RESERVED)

Chapter 22 HUMAN RELATIONS AND SOCIAL SERVICES

(RESERVED)

Chapter 24 LAW ENFORCEMENT¹⁸

ARTICLE I. IN GENERAL

Secs. 24-1—24-18. Reserved.

ARTICLE II. POLICE DEPARTMENT

Sec. 24-19. Established; police chief.

The city has established a police department to be headed by a police chief. The police chief shall have overall supervision and management of the police department and custody of all property used and maintained for

¹⁸State law reference(s)—Municipal civil service, M.S.A. § 44.01 et seq.; peace officers generally, M.S.A. § 626.74 et seq.; part-time peace officers, M.S.A. § 626.8461 et seq.; reserve officers, M.S.A. § 626.8466.

the purposes of the department. The police chief shall submit a periodic report to the council covering the work of his department for intervals required by the council.

(Code 1985, § 2.31)

Sec. 24-20. Police officers and other department employees.

The department shall have the number of additional members and employees as determined from time to time by the council. The mayor shall have, without the approval of the council, authority to appoint additional members of the police department for temporary duty when in his judgment an emergency exists for the preservation of life or property.

(Code 1985, § 2.31)

Sec. 24-21. Authority of police chief and police department members.

- (a) The police chief and all members of the police department shall have the powers and authority of police officers generally and shall perform such duties as are required of them by the council or by law.
- (b) Community service officers and non-sworn members of the police department shall have full authority to take action upon, or issue citations for all petty misdemeanor or misdemeanor violations of this Code, unless otherwise restricted by law.
- (c) Unless specifically noted otherwise, any reference in this Code to "police officer" or any derivation of the term thereof, shall also apply equally to community service officers, except as may be inappropriate or unlawful.

(Code 1985, § 2.31)

Sec. 24-22. Departmental procedures.

The council may establish by resolution, and from time to time revise and amend, a policy relating to investigations and procedures of the department.

(Code 1985, § 2.31)

Chapter 26 NUISANCES¹⁹

ARTICLE I. IN GENERAL

Secs. 26-1—26-18. Reserved.

ARTICLE II. NOISE

¹⁹State law reference(s)—Municipal authority to define nuisances and provide for their prevention or abatement, M.S.A. § 412.221.

Sec. 26-19. Nuisance noises.

- (a) *General regulation; certain auditory conditions or sounds prohibited.* No person shall make or cause to be made any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, peace, safety, or welfare of any persons or precludes their enjoyment of property or affects their property value. The following acts are loud, disturbing, and unnecessary noises that are prohibited:
- (1) The continual sounding of a horn, siren, or other signaling device on a motor vehicle, except in cases of imminent danger or emergency; or the amplification of sound emitted by a signaling device beyond that of its design; provided, however, that burglar alarms, sirens or similar devices installed and operated for the use specified by the manufacturer are exempt from this subsection if they sound no longer than 15 minutes.
 - (2) A radio receiving set, musical instrument, phonograph, stereo, or other machine or electronic or other device used for reproduction of sound used or operated in a manner to unreasonably disturb the peace, quiet, or comfort of a person in its vicinity. The operation of a receiving set, instrument, phonograph, stereo machine or device between 10:00 p.m. and 7:00 a.m. is prima facie evidence of a violation of this subsection if done in a manner to be plainly audible at the real property boundary of the building, structure, residence, or other area in which it is located, or at a distance of 50 feet from any motor vehicle in which it is located.
 - (3) Attracting the attention of the public to a business, building, structure, vehicle, or other area by creating an unreasonably disturbing noise including, but not limited to, crying out, sounding a horn, ringing a bell, or issuing music or sound broadcasts through any radio receiving set, musical instrument, phonograph, stereo, loudspeaker, sound amplifier, or other machine or electronic or other device for the production or reproduction of sound.
 - (4) Creating unreasonably loud or disturbing noise through the use of a sound production or reproduction device in activities or proceedings of a business including, but not limited to, the use of loudspeakers for communications; provided, however, that if the speaker or sound systems are required by law for safety reasons the noise is exempt from the provisions of this subsection.
 - (5) Any disturbing noise in any multifamily residential building audible beyond the boundaries of the area or premises owned, rented, leased, or used by the person.
 - (6) The loading or unloading of a motor vehicle or handling of bales, boxes, crates, or containers in a manner to cause unreasonably loud, unnecessary or disturbing noise.
 - (7) Disturbing noise adjacent to a school, learning institution, religious institution, court, hospital, home for the aged, or other similar institution which unreasonably interferes with the working of the institution or unreasonably disturbs or annoys inhabitants of the institution, provided that a conspicuous sign indicating the presence of the institution is clearly displayed.
 - (8) The operation of a motor vehicle, a mini-bike or other similar vehicle device in a way which results in the squealing of tires or the creation of other disturbing noise on a highway, private road, public or private parking lot, driveway, or other property in the city, except when there is reason to do so for the safe operation of the vehicle.
 - (9) The use of a compression release engine or braking system, commonly known as a "jake" brake, except in an emergency.
 - (10) The operation of an internal combustion engine or the repairing, rebuilding, building or testing of vehicles or equipment in a manner to create unreasonably disturbing noises.

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- (11) Operation of earthmoving or related construction equipment on residential property during more than five days within a 30-day period, except during construction or remodeling activity for which a building or grading permit has been obtained.
 - (12) When a police officer determines that participation in a party or gathering that creates unreasonably loud or disturbing noises as determined at the property line or boundary of the building, structure, rental unit, yard, or other portion of the property where the party or gathering occurs.
- (b) *Exceptions.* This section shall not apply to:
- (1) Noise necessary for the protection or preservation of property or the health, safety, or life of a human being;
 - (2) The operation of motor vehicle on public streets and highways in compliance with state and local laws;
 - (3) Operation of locomotives and railroad cars;
 - (4) Sirens, warning devices or other equipment used by public safety personnel in emergency situations; and
 - (5) Emergency work such as utility maintenance and snow removal necessary to restore public service or to eliminate a hazard, or maintenance activities conducted or contracted for by the city.

(Code 1985, § 10.08(intro. ¶), (1)1—11, (3))

Sec. 26-20. Special events on public property held pursuant to city permit exempt.

The operation of a public address or sound amplification system in a public or private park constitutes a noise nuisance unless a permit has been received from the parks department two weeks before the event or unless it is necessary for the safe operation of the facility. Permits will only be issued for special events such as high school athletic contests, amphitheater events, or in other circumstances determined to be appropriate by the city.

(Code 1985, § 10.08(1)12)

Sec. 26-21. Persons required to leave gathering determined to be emitting nuisance noise.

When a police officer determines that a party or gathering creates unreasonably loud or disturbing noises all persons except the owner, renter, lessee or other occupants must promptly leave the premises in an orderly manner.

(Code 1985, § 10.08(1)11)

Sec. 26-22. Construction and grading activities restricted.

A person must not engage in, permit, or allow construction or grading activities involving the use of power equipment, or other activities resulting in unreasonably loud or disturbing noise at any time other than between 7:00 a.m. and 10:00 p.m.

(Code 1985, § 10.08(2)1)

Sec. 26-23. Outdoor power tool use restriction; exception for snow removal equipment.

A person must not operate outdoor power implements, including, but not limited to, power lawn mowers, power hedge clippers, power saws, or other such implements at any time other than between 7:00 a.m. and 10:00 p.m. Operation of equipment for snow removal is exempt from the provisions of this section when initiated within 12 hours of completion of a recent snowfall.

(Code 1985, § 10.08(2)2)

Sec. 26-24. Other exceptions and variances.

Other variances may be permitted administratively from the strict compliance with the provisions of this article if there are special circumstances or conditions that exist, and the granting of a variance will not materially affect the health, safety, or general welfare of the public. Administrative staff, at its discretion, may require notification of nearby property owners if a variance to the provisions of this article is to be considered. An application for a variance shall state the dates during which the variance is proposed, the location of the noise source and the times of operation, the nature of the noise source, reasons why the variance is sought, and steps taken to minimize the noise level.

(Code 1985, § 10.08(4))

Sec. 26-25. Violations; penalties and costs.

A person who violates any provision of this section is guilty of a misdemeanor, and shall, upon conviction, be subject to fine of not more than \$700.00 or imprisonment not to exceed 90 days, or both. In all cases the city shall be entitled to collect the costs of prosecution to the extent permitted by state law and rules. Each act of violation and each day a violation occurs constitutes a separate offense.

(Code 1985, § 10.08(5))

Secs. 26-26—26-53. Reserved.***ARTICLE III. EMERGENCY SERVICE USE²⁰******DIVISION 1. GENERALLY*****Sec. 26-54. Administrative rules.**

The police chief, subject to approval of the city council, shall promulgate such rules as may be necessary for the implementation of this article and the administration thereof.

(Code 1985, § 10.10(8))

²⁰State law reference(s)—False fire alarms; tampering with or injuring fire alarm system, M.S.A. § 609.686; alarm and communication systems, M.S.A. § 326B.34.

Sec. 26-55. Legal remedies nonexclusive.

Nothing in this article shall be construed to limit the city's other available legal remedies for any violation of the law, which may constitute a nuisance service call hereunder, including criminal, civil, injunctive, or others. Nothing in this article shall be construed to require that formal charges must be brought in order for conduct, or an activity or condition, to qualify as a nuisance violation.

(Code 1985, § 10.10(10))

Secs. 26-56—26-83. Reserved.***DIVISION 2. REPEAT RESPONSES TO NUISANCE VIOLATIONS*****Sec. 26-84. Purpose and intent.**

- (a) The purpose of this division is to protect the public safety, health and welfare and to prevent and abate repeat service response calls by the city to the same property of location for nuisance service calls, as defined in this division, which prevent police or public safety services to other residents of the city.
- (b) It is the intent of the city to impose and collect service call fees from the owner or occupant, or both, of property to which city officials must repeatedly respond for any repeat nuisance event or activity that generates extraordinary costs to the city.
- (c) The repeat nuisance service call fee is intended to cover that cost over and above the cost of providing normal law or code enforcement services and police protection city wide.

(Code 1985, § 10.10(1))

Sec. 26-85. Applicability; scope.

This division shall apply to all owners and occupants, of private property which is the subject or location of the repeat nuisance service call by the city. This division shall apply to any repeat nuisance service call responses made by a city police officers, community service officers, and code enforcement officers and officials.

(Code 1985, § 10.10(2))

Sec. 26-86. Nuisance service calls enumerated and defined; false alarm response excluded.

- (a) The term "nuisance service call" means any activity, conduct, or condition occurring upon private property within the city which unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any member of the public or will tend to, alarm, anger or disturb others to provoke breach of the peace, to which the city is required to respond, including, but not limited to, the following:
 - (1) Any activity, conduct, or condition deemed as a public nuisance under any provision of this Code;
 - (2) Any conduct, activity or condition constituting a violation state law prohibiting or regulating prostitution, gambling, controlled substances, use of firearms;
 - (3) Any conduct, activity, or condition constituting disorderly conduct under M.S.A. ch. 609;

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- (4) Any subsequent violation following the property owner's failure to initiate eviction proceedings against the property tenants when lawfully demanded as required in section 10-177(d); or
 - (5) Calls for fire department service where no actual emergency exists.
- (b) Note that alarm calls, addressed in article II of this chapter, are considered a separate category of nuisance service call and the number of alarm calls is to be considered independently. Alarm calls subject to division 3 of this article and other nuisance service calls subject to this division are not to be considered cumulatively.
- (Code 1985, § 10.10(3))

Sec. 26-87. Fees; late penalties; collection by special assessment.

- (a) The city may impose a repeat nuisance service call fee upon the owner or occupant of private property if the city has rendered services or responded to the property on four or more occasions within a period of 365 days in response to or for the abatement of nuisance conduct, activity, or condition of the same or similar kind.
 - (b) The repeat nuisance service call fee under this division shall be an amount provided in the city fee schedule. All repeat nuisance service call fees imposed and charged against the owner of city's mailing a billing statement therefor. Delinquent payments are subject to a ten percent penalty of the amount due.
 - (c) If an owner fails to pay a service fee as lawfully required under this section, the city council may, at their discretion, assess the fee against the property taxes due on the parcel.
- (Code 1985, § 10.10(5))

Sec. 26-88. Notice of fee levy.

No repeat nuisance service call fee or alarm fee may be imposed against an owner or occupant of property without first providing the owner or occupant with written notice of the prior nuisance service calls prior to the latest nuisance service call rendered by the city upon which the fee is imposed. The written notice shall:

- (1) State the nuisance conduct, activity or condition that is or has occurred or is maintained or permitted on the property, the dates of the nuisance conduct, activity or condition;
- (2) State that the owner or occupant may be subject to a repeat nuisance call service fee if another service call is rendered to the property for nuisance conduct, activity, or condition of the same or similar kind, in addition to the city's right to seek other legal remedies or actions for abatement of the nuisance or compliance with the law; and
- (3) Be served personally or by U.S. mail upon the owner or occupant at the last known address.

(Code 1985, § 10.10(6))

Sec. 26-89. Right to appeal; appeal procedure.

- (a) *Request for hearing.* Upon the imposition of a repeat nuisance service call fee, the city shall inform the owner or occupant of his right to a hearing on the alleged repeat nuisance service calls. The owner or occupant upon whom the fee is imposed may request a hearing by serving upon the police chief with 14 business days of the mailing of the fee invoice, inclusive of the day the invoice is mailed, a written request for a hearing. The hearing shall be heard by the hearing officer within 30 days of the date of the owner's or occupant's request for a hearing.

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- (b) *Hearing procedure; evidentiary rules.* The hearing shall be conducted in an informal manner and the state rules of civil procedure and rules of evidence shall not be strictly applied. The hearing need not be transcribed but may be transcribed at the sole expense of the party who requests the transcription.
 - (c) *Final determination; notice to owner or occupant.* After considering all evidence submitted, the hearing officer shall make written findings of fact and conclusions on the issue of whether the city responded to or rendered services for repeat nuisance calls to the same location on three or more occasions within a 365-day period. The findings and conclusions shall be served upon the owner or occupant by U.S. mail within five days of the conclusion of the hearing.
 - (d) *Waiver of right to hearing.* An owner or occupant's right to a hearing shall be deemed waived if the owner or occupant fails to serve a written request for a hearing as required herein or fails to appear at the scheduled hearing date. Upon waiver of the right to hearing, or upon the hearing officer's written findings of fact and conclusions that the repeat nuisance call service fee is warranted hereunder, the owner or occupant shall immediately pay the fee imposed.

(Code 1985, § 10.10(7))

Secs. 26-90—26-106. Reserved.

DIVISION 3. EXCESSIVE ALARMS²¹

Sec. 26-107. Purpose and intent.

This division provides regulation for the use of fire, burglary and safety alarms, establishes users fees and establishes a system of administration. The purpose of this division is to protect the public safety services of the city from misuse of public alarms, and to provide for the maximum possible service to public safety alarm users.

(Code 1985, § 10.10(4)1)

Sec. 26-108. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires.

Alarm system means any alarm installation designed to be used for the prevention of detection of burglary, robbery or fire on the premises which contains the alarm installation. Automobile alarm devices shall not be considered an alarm for purposes of this division.

Alarm user means the person or entity in control of any building, structure or facility wherein an alarm system is maintained.

False alarm means an alarm system eliciting a response by public safety personnel when a situation requiring a response does not in fact exist and which is caused by the activation of the alarm system through malfunction, improper installation of the inadvertence of the owner or lessee of the alarm system of his employees or agents. The term "false alarm" does not include alarms caused by climactic conditions such as tornadoes, thunderstorms,

²¹State law reference(s)—False fire alarms and tampering with fire alarms, M.S.A. § 609.686; falsely reporting crime, M.S.A. § 609.505.

utility line mishaps, violent conditions of nature or any other conditions which are clearly beyond the control of the alarm manufacturer, installer or owner.

Public safety communication center means the city's facility used to receive emergency requests for service and general information for the public to be dispatched to respective public safety units.

Public safety personnel means duly authorized city employees.

(Code 1985, § 10.10(4)2)

Sec. 26-109. Confidentiality.

All information submitted in compliance with this division shall be held in confidence and shall be deemed a confidential record exempt from discovery to the extent permitted by law. Subject to the requirements of confidentiality, the police chief or fire chief may develop and maintain statistics for the purpose of ongoing alarm system evaluations.

(Code 1985, § 10.10(9))

Sec. 26-110. Alarm user fees assessed for excessive service calls; appeal.

- (a) A public safety alarm system which reports more than three false alarms to the city in a single calendar year and which has received notice of such violations will cause the alarm user to be charged a user fee in the amount provided in the city fee schedule for each false alarm in excess of three false alarms in a calendar year for false notification.
- (b) Any alarm user required to pay a user fee under this section may make a written appeal to the police chief within ten days of notice by the city that the fee will be assessed. Final determination of the appeal by the police chief may be appealed to the city administrator within ten days of the chief's written decision. The decision of the city administrator shall be final.

(Code 1985, § 10.10(4)3)

Sec. 26-111. Payment of fees; late payment penalties; special assessment for collection.

- (a) Alarm user fees assessed under this division must be paid to the city clerk within 30 days from the date of notice by the city to the alarm user that such fee has been assessed. Failure to pay the fee within 30 days shall result in the addition of ten percent of the amount due as a late payment penalty.
- (b) All unpaid delinquent charges for user fees shall be forwarded to the administrator who shall prepare an assessment roll each year of the delinquent amounts against the respective properties serviced which assessment roll shall be delivered to the city council for adoption.

(Code 1985, § 10.10(4)4)

Sec. 26-112. Owner to provide alarm report for excessive alarms.

When an alarm user has incurred five alarms or more within one calendar year, the user shall submit a written report to the police chief and fire chief, when appropriate, within ten days after being charged a fee for their fifth false alarm, describing actions taken or to be taken to discover and eliminate the cause of the false alarms. Failure to submit the written report required by this division will be considered a violation of this chapter.

(Code 1985, § 10.10(4)5)

Sec. 26-113. Violations declared misdemeanors.

Violations of this division constitute a misdemeanor violation.

(Code 1985, § 10.10(4)6)

Secs. 26-114—26-139. Reserved.**ARTICLE IV. PROPERTY MAINTENANCE****Sec. 26-140. Duty of owner to maintain property.**

It is the primary responsibility of any owner or occupant of any lot or parcel of land to remove all public health or safety hazards therefrom, to install or repair water service lines thereon, to treat or remove insect-infested or diseased trees thereon, to maintain landscaping and to otherwise keep his property in safe and nuisance-free condition.

(Code 1985, § 10.33(1))

Sec. 26-141. Landscape maintenance required.

- (a) *Maximum grass height.* Every owner of property abutting on any street shall cause the grass and weeds to be cut from the line of such property nearest to such street to the center of such street. If the grass or weeds in such a place attain a height in excess of 12 inches, it shall be prima facie evidence of a failure to comply with this section.
- (b) *Pruning of trees and shrubs.* Every owner of property abutting on any street shall, subject to the provision herein requiring a permit therefor, trim, cut and otherwise maintain all trees and shrubs from the line of such property nearest to such street to the center of such street.
- (c) *City may perform maintenance.* The city may, in cases of failure to comply with this section, perform such work with employees of the city, keeping an accurate account of the cost thereof for each lot, piece or parcel of land abutting upon such street.
- (d) *Maintenance cost to be collected as special assessment.* If such maintenance work is performed by the city, the administrator shall ascertain and certify the cost attributable to each lot, piece or parcel of abutting land. The administrator shall, at the next regular meeting thereof, present such certificate to the council and obtain its approval thereof. When such certificate has been approved it shall be extended as a special assessment against such abutting land. The special assessment shall, at the time of certifying taxes to the county auditor, be certified for collection as other special assessments are certified and collected.

(Code 1985, § 7.09(3)—(5))

Sec. 26-142. Structural maintenance; exterior surfaces and drainage; firewood storage.

- (a) *Applicability.* This section shall apply to any owner or occupant of a residential dwelling in the city, as well as to any lot or parcel with a residential zoning designation, regardless of use.

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- (b) *Roofing.* All dwellings, garages and other residential accessory buildings shall have complete and intact roofing adequate to protect the structure and shall not be maintained in a fashion that provides leaks, interior water damage, or other threat to the integrity of the building.
 - (c) *Gutters and downspouts.* Where gutters or downspouts are used on a building, such gutters and downspouts shall be attached to the structure and maintained so as to avoid sagging or gaps, or other condition that interferes with proper function, or which causes clogging or leaking of gutters or downspouts.
 - (d) *Exterior wall surfaces.* Exterior wall surfaces shall be maintained as follows:
 - (1) All dwellings, garages and other residential accessory buildings shall have complete siding.
 - (2) No part of any exterior surface shall have significant deterioration including, but not limited to, holes, breaks, gaps, chips, flaking, or loose or rotting siding.
 - (3) All exterior surfaces of the structure, including, but not limited to, doors, door and window frames, cornices, porches and trim, shall be maintained in a good and safe condition and shall be maintained as required for siding or other exterior material.
 - (4) Exterior wood surfaces on the structures, other than decay resistant woods, stucco or other materials that do not normally require protection from the elements shall be protected from the elements and decay by staining, painting or other protective covering or treatment or other appropriate method acceptable to the city.
 - (5) Staining or painting on any surface shall not be allowed to be maintained in a deteriorated state, such as flaking or other similar condition.
 - (6) Mortar or other masonry joints shall be tuck-pointed or otherwise maintained to avoid crumbling or similar deterioration.
 - (e) *Firewood storage.* The term "firewood" means split wood or unsplit wood logs cut into lengths not exceeding three feet for the purpose of burning in a fireplace or as a recreational fire on the property. Firewood shall be kept or stored outdoors in accordance with the following requirements:
 - (1) Firewood shall be stored or kept in a neat and secure stack, with each stack having a maximum of one cord (128 cubic feet per cord), which shall be no higher than five feet.
 - (2) Unless screened by a fence or wall, stacks shall be no closer than five feet to the property line.
 - (3) The firewood stacks shall not be allowed to become infested with rats, rodents, or vermin.
 - (4) Fallen, uncut trees shall be removed or cut up into firewood as soon as it is practicable, not to exceed 90 days. The city council may extend this period, upon written request by the property owner, for an additional 90 days. This requirement may be waived by the code enforcement officer where it is determined that due to natural environmental conditions, the trees do not present a hazard or nuisance.
 - (5) Firewood shall be stored in accordance with the requirements of city land use regulations.

(Code 1985, § 10.33(2))

Sec. 26-143. Junk accumulations prohibited.

It is unlawful to park or store any unlicensed, unregistered or inoperable motor vehicle, household furnishings or appliances, or parts or components thereof, on any property within the city unless properly housed or stored within a lawfully erected building.

(Code 1985, § 10.34)

Sec. 26-144. Violations; abatement by city; lien for costs.

If a property owner in violation of this article has not corrected the violation within seven days after notice from the city, the city may cause such work to be done and the expenses thus incurred shall be a lien upon such real estate. The city shall certify to the county auditor a statement of the amount of the cost incurred by the city. Such amount together with interest shall be entered as a special assessment against such lot or parcel of land and be collected in the same manner as real estate taxes.

(Code 1985, § 10.33(3))

Secs. 26-145—26-171. Reserved.**ARTICLE V. ABANDONED PROPERTY²²****DIVISION 1. GENERALLY****Sec. 26-172. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned motor vehicle.

- (1) The term "abandoned motor vehicle," as defined in M.S.A. ch. 169, means a motor vehicle that:
 - a. Has remained for a period of more than 48 hours on public property illegally;
 - b. Is lacking vital component parts;
 - c. Has remained for a period of more than 48 hours on private property without the consent of the person in control of such property; or
 - d. Is in an inoperable condition such that it has no substantial potential further use consistent with its usual function unless it is kept in an enclosed garage or storage building.
- (2) The term "abandoned motor vehicle" also means a motor vehicle voluntarily surrendered by its owner to and accepted by the city, but does not include classic cars or pioneer cars, as defined in M.S.A. ch. 168 or vehicles on the premises of junkyards or automobile graveyards licensed and maintained in accordance with this Code.

Abandoned personal property means tangible or intangible property, other than motor vehicles, that has come into the possession of the city in the course of governmental operations or having been turned over to the city by a person after being found on public or private property.

Garage keeper means an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair or maintenance of motor vehicles.

²²State law reference(s)—Disposition of Unclaimed Property Act, M.S.A. § 345.31 et seq.; unclaimed property held by public officers and agencies, M.S.A. § 345.38; authority of city to dispose of unclaimed property, M.S.A. § 471.195.

Vital component parts means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train and wheels.

(Code 1985, § 2.70(1)(A), (E), (2)(A))

Sec. 26-173. Disposal of unclaimed personal property.

- (a) All unclaimed personal property other than vehicles shall be placed in charge of the police chief who shall, if the identity and whereabouts of the owner is unknown, initiate and pursue such reasonable investigation as may be indicated under the circumstances. When the identity and whereabouts of the owner has been established, written notice shall be given that the property can be claimed by the owner from the police chief.
- (b) If the police chief is unable to identify the owner within 60 days of taking possession of the property, the city council may order the property sold at public auction or sale to the highest bidder or sold through private sale to a nonprofit organization having a significant mission of community service.
- (c) If the city council directs sale of the property by public auction, the city shall give ten days' published notice describing the property to be sold and specifying the time and place of sale. The notice must be published at least once in a legal newspaper within the city or county. Funds from the sale of property under this section shall be placed in the general fund.
- (d) Within six months from the date of sale, the owner of property sold under this section shall be entitled to recover the sales price from the city upon application and presentation of satisfactory proof of ownership.

(Code 1985, § 2.70(2)(B))

Secs. 26-174—26-199. Reserved.

DIVISION 2. VEHICLES²³

Sec. 26-200. Abandoning motor vehicle prohibited.

It is unlawful for any person to abandon a motor vehicle on any public or private property without the consent of the person in control of such property. For the purpose of this section, the term "motor vehicle" is as defined in M.S.A. ch. 169.

(Code 1985, § 10.52)

State law reference(s)—Similar provision, M.S.A. § 168B.03.

Sec. 26-201. Authority of city to impound.

The city may take into custody and impound any abandoned motor vehicle pursuant to authority granted in M.S.A. § 168B.04.

²³State law reference(s)—Abandoned motor vehicles, M.S.A. § 168B.01 et seq.; local abandoned motor vehicle disposal laws, M.S.A. § 168B.09.

(Code 1985, § 2.70(1)(B))

State law reference(s)—Similar provision, M.S.A. § 168B.04; when towing is permitted, M.S.A. § 168B.035.

Sec. 26-202. Immediate sale of certain vehicles authorized.

When an abandoned motor vehicle is more than seven model years of age, is lacking vital component parts, and does not display a license plate currently valid in the state or any other state or foreign country, it shall immediately be eligible for sale at public auction, and shall not be subject to the notification, reclamation, or title provisions of this division.

(Code 1985, § 2.70(1)(C))

Sec. 26-203. Notice of impoundment.

- (a) If an impounded abandoned vehicle is not subject to immediate sale under this division, the city shall give notice of the impoundment within ten days.
- (b) The notice shall set forth the date and place of the impoundment, the year, make, model and serial number of the abandoned motor vehicle, if such information can be reasonably obtained, and the place where the vehicle is being held.
- (c) The notice shall also inform the owner and any lienholders of their right to reclaim the vehicle under this division and state that failure of the owner or lienholder to exercise their right to reclaim the vehicle and contents shall be deemed a waiver by them of all rights, title and interest in the vehicle and a consent to the sale of the vehicle and contents at a public auction under this division.
- (d) The notice shall be sent by mail to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice shall be published once in the official newspaper. Published notices may be grouped together for convenience and economy.

(Code 1985, § 2.70(1)(D))

Sec. 26-204. Right to reclaim.

- (a) The owner or any lienholder of an abandoned motor vehicle shall have a right to reclaim such vehicle from the city upon payment of all towing and storage charges resulting from taking the vehicle into custody within 15 days after the date of the notice required by this division.
- (b) Nothing in this division shall be construed to impair any lien of a garage keeper under state law or the right of the lienholder to foreclose.

(Code 1985, § 2.70(1)(E))

Sec. 26-205. Public sale; application and distribution of proceeds.

- (a) An abandoned motor vehicle and contents taken into custody and not reclaimed shall be sold to the highest bidder at public auction or sale, following one notice published at least seven days prior to such auction or sale.

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- (b) The purchaser shall be given a receipt in a form prescribed by the registrar of motor vehicles which shall be sufficient title to dispose of the vehicle. The receipt shall also entitle the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership.
 - (c) Before such a vehicle is issued a new certificate of title, it must receive a motor vehicle safety check.
 - (d) From the proceeds of the sale of an abandoned motor vehicle, the city shall reimburse itself for the cost of towing, preserving and storing the vehicle, and all administrative, notice and publication costs incurred pursuant to this division. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lien holder for 90 days and then shall be deposited in the general fund of the city.
 - (e) If the sale of an abandoned motor vehicle results in proceeds insufficient to reimburse the city for the cost of towing, preserving and storing the vehicle, and all administrative, notice and publication costs incurred in handling the vehicle, the city may commence an action in any court of competent jurisdiction against the owner of the abandoned motor vehicle or the person in actual possession of the vehicle for any such deficiency.

(Code 1985, § 2.70(1)(F))

Sec. 26-206. Disposal of unsold vehicles.

- (a) When no bid has been received for an abandoned motor vehicle, the city may dispose of it in accordance with this section.
- (b) The city may contract with any qualified person for collection, storage, incineration, volume reduction, transportation or other services necessary to prepare abandoned motor vehicles and other scrap metal for recycling or other methods of disposal.
- (c) When the city enters into a contract with a person duly licensed by the state pollution control agency, the agency shall review the contract to determine whether it conforms to the agency's plan for solid waste disposal. A contract that does so conform may be approved by the agency. When a contract has been approved, the agency may reimburse the city for the costs incurred under the contract which have not been reimbursed.
- (d) If the city utilizes its own equipment and personnel for disposal of the abandoned motor vehicle, it shall be entitled to reimbursement for the cost thereof along with its other costs as provided in this division.

(Code 1985, § 2.70(1)(G), (H))

Secs. 26-207—26-229. Reserved.

ARTICLE VI. GRAFFITI CONTROL

Sec. 26-230. Purpose.

- (a) The council finds that graffiti is an increasing problem in the city. The council finds that quick removal of graffiti may assist in preventing encouragement of the defacement of property.
- (b) The council further finds that graffiti creates a condition of blight which can result in the deterioration of property values and is inconsistent with the city's property maintenance goals and aesthetic standards. In addition, unless graffiti is removed, other properties soon become the targets of graffiti.

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- (c) The council hereby declares its intention to minimize and to quickly remove graffiti to limit its adverse impact on city youth and neighborhoods. Graffiti is hereby declared to be a public nuisance and a public health and safety hazard for purposes of M.S.A. § 429.101, subd. 1(c) and M.S.A. § 429.021, subd. 1(8).

(Ord. No. 2022-9 , 12-5-2022)

Sec. 26-231. Definitions.

For purposes of this section, the terms defined in this section shall have the following meaning ascribed to them.

Graffiti shall mean any writing, printing, marks, signs, symbols, figures, designs, inscriptions, or other drawings which are scratched, scrawled, painted, drawn, or otherwise placed on any surface of objects such as buildings, walls, fences, sidewalks, curbs, trees, rocks, or other permanent structures or objects on public or private property or the interior surfaces of those parts of buildings accessible to the general public and which have the effect of defacing the property.

(Ord. No. 2022-9 , 12-5-2022)

Sec. 26-232. Unlawful conduct regarding creation of graffiti.

It shall be unlawful for any person to intentionally place graffiti on public or private property except with the express permission of the person in lawful ownership or possession of such property and in accordance with the requirements of City Code.

(Ord. No. 2022-9 , 12-5-2022)

Sec. 26-233. Removal of graffiti.

- (a) A property owner may ask the city to remove graffiti from the owner's property before being ordered to do so following the abatement procedure set forth in sections 26-234 through 26-237. If the city agrees to remove the graffiti, the city shall have the property owner or its designated agent sign a release of liability form and a consent form authorizing the city or its agents to enter onto the property. In the case of commercial property, the property owner shall be liable for all costs incurred in removing the graffiti. In the case of residential property, the ability of the property owner to pay the costs will be assessed. To remove the graffiti, the city may use city employees or authorize a private contractor. The city will be responsible for costs incurred with cleanup on public property. If cleanup is provided by the city, the city may collect the costs as a special assessment pursuant to M.S.A. § 429.101, subd. 1(c) if the property owner fails to reimburse the city within 30 days of receipt of invoice.
- (b) If an owner does not remove graffiti and does not ask the city to remove graffiti from the owner's property before being ordered to do so, the city may remove the graffiti by following the abatement procedure set forth in sections 26-234 through 26-237 herein.

(Ord. No. 2022-9 , 12-5-2022)

Sec. 26-234. City police to identify.

- (a) Based upon information received from the public or upon police observation, the police department shall investigate and identify graffiti. After the police department has verified the existence of graffiti, the department shall send a letter to the property owner by certified mail or personal delivery, with affidavit of

service, informing the property owner about the graffiti and requesting the removal of the graffiti within a reasonable period of time which shall not be less than ten days, based upon consideration of weather conditions and other relevant factors. The police department shall verify whether the graffiti has in fact been removed.

- (b) If the police department finds that the graffiti has not been removed within the time allotted, the department shall contact the city clerk, who shall schedule a public hearing. The city clerk shall notify the affected property owner of the hearing date, the preliminary findings that graffiti exists on the owner's property, and that the council may, after the hearing, order the removal of the graffiti by the property owner or the city; and, if the city has to remove the graffiti, the costs will be assessed against the owner's property.

(Ord. No. 2022-9 , 12-5-2022)

Sec. 26-235. Hearing.

- (a) At a hearing before the council, the council shall receive evidence from the police department and from any other persons with knowledge as to the existence of graffiti. The property owner shall be entitled to be heard on all matters relating to graffiti and the process of removal. The existence of graffiti must be proven by a preponderance of the evidence.
- (b) If the council finds that graffiti exists, the council shall direct its removal in accordance with sections 26-236 and 26-237.

(Ord. No. 2022-9 , 12-5-2022)

Sec. 26-236. Notice to owner.

- (a) In the event the council finds that graffiti exists, the city attorney shall mail a written order to the owner of the subject real property, addressed to the owner's last known address. The written order shall:
 - (1) Contain a description of the real estate sufficient for identification.
 - (2) Inform the owner that the council has found graffiti exists on the owner's property.
 - (3) Request that the owner remove or obliterate the graffiti within a reasonable time as determined by the council.
 - (4) Inform the owner that a motion for summary enforcement of the order will be made to the District Court for Wright County unless corrective action is taken within the time allotted, or unless an answer is filed within 20 days from the date of service of the order. An answer to the order must be served in the manner of an answer in a civil action and must specifically deny such facts in the order as are in dispute.
- (b) *Service of the order.* The written order shall be served upon the owner of record or the owner's agent if an agent is in charge of the building or property, and upon the occupying tenant, if there is one, and upon all lienholders of record, in the manner provided for service of a summons in a civil action. If the owner cannot be found, the order shall be served upon the owner by posting it at the main entrance to the building or upon the structure, and by three weeks published notice in the official newspaper of the city or any legal newspaper in the county. Service shall be deemed complete 21 days after the first publication.
- (c) *Filing of order.* A copy of the order with proof of service shall be filed with the court administrator of the District Court for Wright County not less than five days prior to the filing of a motion for enforcement of the order.

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- (d) *Default.* If no answer is served, the city may move the court for the enforcement of the order. If such motion is made, the court may, upon the presentation of such evidence as it may require, affirm or modify the order and enter judgment accordingly, fixing a time after which the city may proceed with the enforcement of the order and specifically authorizing the city to enter the property to remove or abate the graffiti.
 - (e) *Contested cases.* If an answer is filed and served, further proceedings in the action shall be governed by the rules of civil procedure for the district courts. If the order is sustained following the trial, the court shall enter judgment and shall fix a time after which the graffiti must be removed in compliance with the original order as filed or modified by the court. If the order is not sustained, it shall be annulled and set aside. The court administrator shall cause a copy of the judgment to be mailed forthwith to persons upon whom the original order was served.
 - (f) *Enforcement of judgment.* If the owner of record fails to comply with the judgment by failing to remove the graffiti within the time prescribed, the city may enter the property and remove the graffiti as set forth in the judgment.

(Ord. No. 2022-9 , 12-5-2022)

Sec. 26-237. Costs to be assessed.

- (a) In the event the city removes the graffiti, the costs of the removal may be a lien against the real estate on which the building or structure is located, or recovered by obtaining a judgment against the owner of the real estate on which the building or structure is located. A lien may be levied and collected as a special assessment in the manner provided by M.S.A. §§ 429.061 to 429.081, but the assessment is payable in a single installment.
- (b) The city shall keep an accurate account of the expenses incurred in carrying out the order and of all other expenses incurred in connection with its enforcement including filing fees, witness fees, expert witness fees, and traveling expenses incurred by the city from the time the order was originally made. The city shall report its action under the order with a statement of expenses incurred to the court for approval and allowance. The court shall, by its judgment, certify the deficiency in the amount so allowed to the city clerk for collection.

(Ord. No. 2022-9 , 12-5-2022)

Sec. 26-238. Graffiti abatement civil in nature.

Sections 26-236 and 26-237 relating to the abatement of graffiti shall not be treated as misdemeanors nor shall they be criminal in nature.

(Ord. No. 2022-9 , 12-5-2022)

Sec. 26-239. Penalty.

Any person who violates any provision of section 26-232 is guilty of a Misdemeanor; and upon conviction thereof shall be punished by a fine and/or imprisonment consistent with state law for misdemeanor crimes, plus the costs of prosecution.

(Ord. No. 2022-9 , 12-5-2022)

Chapter 28 OFFENSES²⁴

ARTICLE I. IN GENERAL

Sec. 28-1. Disorderly conduct.

It is unlawful for any person, in a public or private place, knowing, or having reasonable grounds to know, that it will, or will tend to, alarm, anger or disturb others or provoke any assault or breach of the peace, to do the following:

- (1) Engage in brawling or fighting;
- (2) Disturb an assembly or meeting, not unlawful in its character;
- (3) Engage in offensive, obscene or abusive language or in boisterous and noisy conduct tending reasonably to arouse alarm, anger or resentment in others;
- (4) Willfully and lewdly expose his person or the private parts thereof, or procure another to so expose himself; and any open or gross lewdness or lascivious behavior or any act of public indecency;
- (5) Whether or not posted with signs so prohibiting, voluntarily enter the waters of any river or public swimming pool at any time when the waters are not properly supervised by trained life-saving personnel in attendance for that purpose, or enter such waters without being garbed in a bathing suit sufficient to cover his person and equal to the standards generally adopted and accepted by the public;
- (6) Urinate or defecate in a place other than in a plumbing fixture provided for that purpose on public property or on private property with permission of the property owner;
- (7) Cause the making or production of an unnecessary noise by shouting or by any other means or mechanism including the blowing of any automobile or other vehicle horn;
- (8) Use a sound amplifier upon streets and public property without prior written permission from the city;
- (9) Use a flash or spotlight in a manner so as to annoy or endanger others;
- (10) Cause defacement, destruction, or otherwise damage to any premises or any property located thereon;
- (11) Strew, scatter, litter, throw, dispose of or deposit any refuse, garbage, or rubbish unto any premises except into receptacles provided for such purpose;
- (12) Enter any motor vehicle of another without the consent of the owner or operator; or
- (13) Fail or refuse to vacate or leave any premises after being requested or ordered, whether orally or in writing, to do so, by the owner, or person in charge thereof, or by any law enforcement agent or official; provided, however, that this provision shall not apply to any person who is owner or tenant of the premises involved nor to any law enforcement or other government official who may be present thereon at that time as part of his official duty, nor shall it include the spouse, children, employee or tenant of such owner or occupier.

²⁴State law reference(s)—Minnesota Criminal Code, M.S.A. § 609.001; municipal authority to define nuisances and provide for their prevention or abatement, M.S.A. § 412.221.

(Code 1985, § 10.06)

State law reference(s)—Similar provision, M.S.A. § 609.72.

Sec. 28-2. Climbing prohibited.

It is unlawful for any person to climb onto, or be in or upon, any tower, building or other structure on private property without the consent of the owner or person in charge of such property. It is also unlawful for any person to climb upon any city-owned tower or other structure without the consent of the city. This section shall not apply to personnel of either the fire or police department of the city.

(Code 1985, § 10.31)

Sec. 28-3. Loitering.

- (a) *Prohibited.* It is unlawful to lurk, loiter, or prowl in any place, at a time or in a manner not usual for law abiding individuals, under circumstances that warrant alarm for the safety of persons or property in the vicinity.
- (b) *Circumstances causing alarm.* Circumstances that may be considered in determining whether alarm is warranted include, but are not limited to, the fact that the person takes flight upon the appearance of a police officer, the fact that the person refuses to identify themselves, or the fact that the person endeavors to conceal themselves or an object.
- (c) *Authority to detain.* A police officer may stop and briefly detain a person suspected of violating this section if the person's behavior reasonably causes suspicion of criminal activity. The officer's reasonable suspicion must be based on objective, articulable facts and reasonable inferences drawn from all the circumstances surrounding incident and the person's behavior.
- (d) *Opportunity to dispel alarm.* Unless flight by the person or other circumstances make it impracticable, a police officer must, prior to arrest for a violation of this section, allow the person an opportunity to dispel any alarm which would otherwise be warranted by requesting the person to identify themselves and explain their presence and conduct. If it can be determined by the officer that there is a suitable explanation for the individual's conduct, no arrest shall be made. However, where lawful to do so, the officer, at their discretion, may order the individual to leave the premises.
- (e) *Acceptable forms of identification.* A person may identify himself to law enforcement or other authorized officers by presenting any a state-issued photo identification card or driver's license; an employer-issued photo identification card issued to him by his employer, a valid and current passport, a certified copy of his birth certificate. The officer may, in his discretion, also accept verification of the person's identity by another person who can establish his own identity by one of the documents listed.

(Code 1985, §§ 10.09(1)(A)—(D), 10.55(1)(A)—(D))

Sec. 28-4. Obstructing public passage.

- (a) A person may not loiter, stand, sit or lie in or upon any public property, private sidewalk, street, curb, crosswalk, walkway area, parking lot, mall, or other portion of private property open for public use, so as to unreasonably block, obstruct, or hinder free passage of the public. Also, a person must not unreasonably block, obstruct, or hinder free access to the entrance of a building or part of a building open to the public without the consent of the owner or occupant.

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- (b) A person may not be arrested or convicted under this section until after a police officer has warned the person that his action violates this section and has asked the person to move to a location that does not violate this section. A person who has been duly warned and continues to violation this section or who commits a subsequent violation of this section on the same premises within 30 days of the previous warning, regardless of whether the first violation resulted in a formal charge, shall be considered to have been previously warned, and is subject to immediate arrest.

(Code 1985, §§ 10.09(1)(E), 10.55(1)(E))

State law reference(s)—Obstruction of rights-of-way generally, M.S.A. § 160.2715.

Sec. 28-5. Trespassing on public buildings and grounds.

- (a) *Prohibited.* It is unlawful for any person to remain in a public building or upon the grounds thereof after being requested to leave the premises by persons lawfully responsible for the control and maintenance thereof, when the continued presence of any person shall injure or endanger the safety of the public building or unreasonably interfere with the administration thereof. It is also unlawful for any person to willfully harass, disrupt, interfere with or obstruct any public or governmental business or function being conducted within or upon the premises or grounds of any public building.
- (b) *Public building defined.* For purposes of this section, the term "public building" means structures or areas owned and operated by any governmental unit for the conduct of governmental or public functions, including, but not limited to, public and private schools and colleges, libraries, parks, parking lots, playgrounds, airports, holding ponds, courthouses, jails and reformatories, and city, county, state, or federal administrative offices.

(Code 1985, §§ 10.09(2)(A)—(C), 10.55(2)(A)—(C))

State law reference(s)—Trespass, M.S.A. § 609.605.

Sec. 28-6. Trespassing on private property.

- (a) *Prohibited when fenced.* A person may not, without claim of right, enter private land that is fenced without first obtaining permission of the owner or lawful possessor.
- (b) *Prohibited when posted.* A person may not, without claim of right, enter private land that is posted "no trespassing," "keep out," or similar terms without first obtaining permission of the owner or lawful possessor.
- (c) *Manner of posting.* Signs prohibiting trespassing must be posted on the private land either at the primary corners, access roads or driveways, major fence posts, or in other conspicuous places. A person who posts such a sign that prohibits trespassing must have a property right, title or interest use to the land.

(Code 1985, §§ 10.09(2)(D)—(G), 10.55(2)(D)—(G))

State law reference(s)—Trespass, M.S.A. § 609.605.

Sec. 28-7. Unlawful assembly.

- (a) *Prohibited generally.* When three or more persons assemble, each participant is guilty of unlawful assembly, if the assembly is with intent to commit any unlawful act by force, or with intent to carry out any purpose in such manner as will disturb or threaten the public peace, or without unlawful purpose and conducted in a disorderly manner so as to disturb or threaten the public peace.

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- (b) *Prohibited in public parking areas.* It shall be a violation of this section for three or more persons to linger or remain for more than five minutes in any city-owned vehicle parking lot between the hours of 6:00 p.m. and 6:00 a.m. includes individuals who occupy the space for the specific or apparent purpose of congregation. This section shall not apply in public parks, to persons loading or unloading passengers or property, to persons participating in or attending city-approved functions, or to persons having official permission from the city to be present in the parking area.
 - (c) *Warning prior to arrest.* A person may not be arrested or convicted for violation of this section until after a police officer has informed the person that their action violates this section and has asked the person to move to a location that would not violate this section. A person who has been duly warned and continues to violate this section or who commits a subsequent violation of this section on the same premises within 30 days of the previous warning, regardless of whether the first violation resulted in a formal charge, shall be considered to have been previously warned, and is subject to immediate arrest.
 - (d) *Authority of police to order immediate dispersal.* A police officer may order all persons present in violation of this section to immediately disperse. Refusal to leave a public parking lot when directed to do so by a law enforcement officer is a violation of this section.

(Code 1985, §§ 10.09(3), 10.55(3))

State law reference(s)—Similar provisions, M.S.A. § 609.705.

Sec. 28-8. Curfew for minors; exceptions.

- (a) It is unlawful for persons under the age of 18 years to be or loiter upon the streets or public places as described in this section during the following hours:
 - (1) For persons 15 years of age and under between the hours of 10:30 p.m. and 5:00 a.m. of the day following.
 - (2) For persons 16 and 17 years of age, between the hours of 12:00 midnight and 5:00 a.m.
- (b) It is unlawful for any parent, guardian, or other person having the legal care or custody of any minor to allow or permit such minor person to be or loiter upon the streets or public places in violation of this section unless such minor is accompanied by a parent or guardian.
- (c) It is unlawful for any person operating, or in charge of, any place of amusement, entertainment or refreshment, or other place of business, to allow or permit any minor to be or loiter in such place in violation of this section unless such minor is accompanied by a person of lawful age having such minor in charge. This subsection shall not be construed to permit the presence, at any time, of any person underage in any place where his presence is otherwise prohibited by law.
- (d) Such curfew shall not apply to any minor who is lawfully attending, going to or returning from school, church or community sponsored athletic, musical or social activities or events, or traveling to or from a place of employment.

(Code 1985, § 10.05)

Sec. 28-9. Violations and penalties.

Every person who violates this chapter, upon conviction, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

(Code 1985, § 10.99)

Secs. 28-10—28-36. Reserved.

ARTICLE II. WEAPONS AND DANGEROUS OBJECTS²⁵

Sec. 28-37. Dangerous weapons.

- (a) It is unlawful for any person to:
- (1) Recklessly handle or use a gun or other dangerous weapon or explosive so as to endanger the safety of another;
 - (2) Intentionally point a gun of any kind, capable of injuring or killing a human being and whether loaded or unloaded, at or toward another;
 - (3) Manufacture or sell for any unlawful purpose any weapon known as a slung-shot or sand club;
 - (4) Manufacture, transfer or possess metal knuckles or a switch blade knife opening automatically;
 - (5) Possess any other dangerous article or substance for the purpose of being used unlawfully as a weapon against another; or
 - (6) Possess, sell, transfer, or have in possession for sale or transfer, any weapon commonly known as a throwing star or nunchuck. For the purposes of this subsection, the term "throwing star" means a circular metallic device with any number of points projecting from the edge, and the term "nunchuck" means a pair of wood sticks or metallic rods separated by chain links attached to one end of each such stick or rod.
- (b) Nothing in this section shall prohibit the possession of the articles therein mentioned if the purpose of such possession is for public exhibition by museums or collectors of art.

(Code 1985, § 10.03(1), (2))

State law reference(s)—Similar provision, M.S.A. § 609.66.

Sec. 28-38. Discharge of firearms and explosives.

It is unlawful for any person to fire or discharge any cannon, gun, pistol or other firearm, firecracker, skyrocket or other fireworks, air gun, air rifle, or other similar device commonly referred to as a BB gun. Nothing in this section shall apply to the possession or use of fireworks as provided in chapter 18, to a peace officer in the discharge of his duty, to a person in the lawful defense of his person or family, or to the discharge of firearms in a range authorized in writing by the council.

(Code 1985, § 10.03(3)—(5))

Sec. 28-39. Use of bow and arrow.

It is unlawful for any person to shoot a bow and arrow except in a:

²⁵State law reference(s)—Local regulation of pistols and Saturday night special restricted, M.S.A. § 624.717; authority for local zoning regulations applicable to firearms dealers, M.S.A. § 471.635.

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- (1) Physical education program in a school supervised by a member of its faculty;
 - (2) Community-wide supervised class or event specifically authorized by the police chief; or
 - (3) Bow and arrow range authorized by the council.

(Code 1985, § 10.03(7))

Sec. 28-40. Exposure of children to unused container.

It is unlawful for any person, being the owner or in possession or control thereof, to permit an unused refrigerator, ice box, or other container, sufficiently large to retain any child and with doors which fasten automatically when closed, to expose the same accessible to children, without removing the doors, lids, hinges or latches.

(Code 1985, § 10.03(6))

State law reference(s)—Similar provisions, M.S.A. § 609.6375.

Chapter 30 PARKS AND RECREATION²⁶

ARTICLE I. IN GENERAL

Secs. 30-1—30-18. Reserved.

ARTICLE II. PARK RULES AND REGULATIONS

Sec. 30-19. Authority of council to establish and amend rules; applicability.

- (a) The council may, by resolution, adopt, and from time to time amend, rules and regulations governing public parks. It is unlawful to violate such rules and regulations as are conspicuously signposted in such parks, which shall also apply to the waters of Lake Pulaski and Buffalo Lake.
- (b) The council may, by resolution, adopt additional restrictions on traffic, together with rules and regulations for the use of public parks, and post the same upon such parks, playgrounds, recreational areas or athletic fields as they apply, and it is unlawful for any person to violate the same when so signposted.

(Code 1985, § 10.30(1), (3))

Sec. 30-20. Traffic prohibited; exceptions.

It is unlawful for any person to drive a self-propelled or motorized vehicle, except an electrically propelled wheelchair, in any park, playground, recreational area or athletic field owned or maintained by the city except upon a street or other public thoroughfare therein, provided that this section shall not apply to persons operating

²⁶State law reference(s)—Authority to establish parks, parkways and recreational facilities, M.S.A. § 412.491; municipal authority to acquire and equip parks, M.S.A. § 429.021.

motorized golf carts under a permit issued by the city, or to construction or maintenance equipment operated by, or under a contract with, the city and within the scope of such operation or contract.

(Code 1985, § 10.30(2))

Chapter 32 SECONDHAND GOODS²⁷

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Billable transaction means every reportable transaction conducted by a pawnbroker except renewals, redemptions or extensions of existing pawns on items previously reported and continuously in the licensee's possession, voided transactions and confiscations.

Pawn transaction means any loan on the security of pledged goods or any purchase of pledged goods on the condition that the pledged goods are left with the pawnbroker and may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.

Pawnbroker means a person engaged in whole or in part in the business of lending money on the security of pledged goods left in pawn, or in the business of purchasing tangible personal property to be left in pawn on the condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time. This definition does not include those governmental entities and financial institution exempt pursuant to M.S.A. § 325J.01(4)(b).

Pawnshop means the location at which or premises in which a pawnbroker regularly conducts business.

Pledged goods means tangible personal property other than choses in action, securities, bank drafts, or printed evidence of indebtedness, that are purchased by, deposited with, or otherwise actually delivered into the possession of a pawnbroker in connection with a pawn transaction.

Reportable transaction, as to pawnshops, means every transaction conducted by a pawnbroker in which merchandise is received through a pawn, purchase, consignment or trade, or in which a pawn is renewed, extended or redeemed, or for which a unique transaction number or identifier is generated by their point-of-sale software, or an item is confiscated by law enforcement, except:

- (1) The bulk purchase or consignment of new or used merchandise from a merchant, manufacturer or wholesaler having an established permanent place of business, and the retail sale of the merchandise, provided the pawnbroker must maintain a record of such purchase or consignment which described each item, and must mark each item in a manner which relates it to that transaction record.
- (2) Retail and wholesale sales of merchandise originally received by pawn or purchase and for which all applicable hold or redemption periods have expired.

²⁷State law reference(s)—Secondhand goods defined, M.S.A. § 471.925; misconduct of junk or secondhand dealer, M.S.A. § 609.815; pawnbrokers, M.S.A. ch. 325J; municipal regulation of pawnbrokers, M.S.A. § 325J.02.

Secondhand goods dealer or dealer means a person whose regular business includes selling or receiving tangible personal property (excluding motor vehicles) previously used, rented, owned or leased.

(Code 1985, §§ 6.40(1), 6.40.1(2))

Sec. 32-2. Exemptions.

This chapter does not apply to or include:

- (1) The sale of secondhand goods where the following conditions are present:
 - a. The sale is held on property occupied as a dwelling by the seller, or owned, rented or leased by a charitable or political organization;
 - b. The items offered for sale are owned by the occupant;
 - c. The sale does not exceed a period of 72 consecutive hours;
 - d. Not more than two sales are held either by the same person or on the same property in any 12-month period; and
 - e. None of the items offered for sale have been purchased for resale or received on consignment for purpose of resale.
- (2) Sales by a person licensed as a motor vehicle dealer.
- (3) Sale of secondhand books, magazines, sound or video recordings or films.
- (4) Sale of goods at an auction held by a licensed auctioneer.
- (5) The business of buying or selling only those secondhand goods taken as part or full payment for new goods, and where such business is incidental to and not the primary business of a person.
- (6) A bulk sale of property from a merchant, manufacturer, or wholesaler having an established place of business or of goods sold at open sale from bankrupt stock.
- (7) Goods sold at a public market.
- (8) Goods sold at an exhibition.
- (9) The sale of secondhand goods by a secondhand goods dealer on property where no pawnbroker license is in effect.

(Code 1985, § 6.40(2))

Sec. 32-3. License and investigation fees.

License and investigation fees for all licenses issued pursuant to this chapter shall be in the amount provided in the city fee schedule.

(Code 1985, § 6.40(5))

Sec. 32-4. Violations constitute misdemeanor.

Violations of this chapter constitute misdemeanors, punishable as provided in section 1-11.

Secs. 32-5—32-26. Reserved.

ARTICLE II. SECONDHAND GOODS DEALERS

DIVISION 1. GENERALLY

Secs. 32-27—32-55. Reserved.

DIVISION 2. LICENSES

Sec. 32-56. License required; separate licenses required for dealers and pawnbrokers.

A pawnbroker may not conduct, operate or engage in the business of secondhand goods dealer without having obtained a secondhand goods dealer license in addition to a pawnbroker license. A secondhand goods dealer may not conduct, operate or engage in the business of pawnbroker without having obtained a pawnbroker license in addition to a secondhand goods dealer license. A separate license is required for each place of business.

(Code 1985, § 6.40(3))

State law reference(s)—Similar provision, M.S.A. § 325J.02.

Secs. 32-57—32-137. Reserved.

ARTICLE III. PAWNBROKERS

DIVISION 1. GENERALLY

Sec. 32-138. Findings and purpose; implementation of automated pawn system.

- (a) The city council finds that use of services provided by pawnbrokers provides an opportunity for the commission of crimes and their concealment because pawn businesses have the ability to receive and transfer property stolen by others easily and quickly.
- (b) The city council also finds that consumer protection regulation is warranted in transactions involving pawnbrokers.
- (c) The city council further finds that the pawn industry has outgrown the city's current ability to effectively identify criminal activity related to pawn shops.
- (d) The purpose of this article is to prevent pawn businesses from being used as facilities for the commission of crimes and to assure that such businesses comply with basic consumer protection standards, thereby protecting the public health, safety and general welfare of the citizens of the city.
- (e) To help the police department better regulate current and future pawn businesses, decrease and stabilize costs associated with the regulation of the pawn industry and increase identification of criminal activities in

the pawn industry through the timely collection and sharing of pawn transaction information, this article also implements and establishes the use of the state's automated pawn system (APS) which requires electronic reporting of pawn transactions as detailed in this article.

(Code 1985, § 6.40.1(1))

Sec. 32-139. Periodic inspections.

- (a) At all times during the term of a license issued under this article, the licensee must allow law enforcement officials to enter the premises where the licensed business is located, including all offsite storage facilities, during normal business hours, except in an emergency, for the purposes of inspecting such premises and inspecting the items, ware and merchandise and records therein to verify compliance with this chapter or other applicable laws.
- (b) A peace officer or any properly designated employee of the city, county or state may enter, inspect and search business premises licensed under this section during business hours, without a warrant.

(Code 1985, § 6.40.1(12)(A), (25))

Sec. 32-140. County license required for pawnbrokers in precious metals and gems.

Pawnbrokers dealing in precious metals and gems must be licensed by the county as required by M.S.A. § 325F.73.

(Code 1985, § 6.40.1(26))

Secs. 32-141—32-163. Reserved.

DIVISION 2. LICENSING

Sec. 32-164. License required.

No person shall engage in or carry on the business of pawnbroker without first obtaining a license to carry on such business in compliance with the provisions of this division.

(Code 1985, § 6.40.1(3)(A))

State law reference(s)—Similar provision, M.S.A. § 325J.02.

Sec. 32-165. Application content and execution.

- (a) *Generally.* An application form provided by the city administrator's office must be completed by every applicant for a new license or for renewal of an existing license. Every new applicant must provide the information required by this section.
- (b) *Natural persons.* If the applicant is a natural person:
 - (1) The name, place and date of birth, street residence address and telephone number of the applicant.
 - (2) Whether the applicant is a citizen of the United States or resident alien.

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- (3) Whether the applicant has ever used or has been known by a name other than the applicant's name and, if so, the name or names used and information concerning dates and places used.
 - (4) The name of the business, if it is to be conducted under a designated name, or style other than the name of the applicant and a certified copy of the certificate as required by M.S.A. § 333.01.
 - (5) The street address at which the applicant has lived during the preceding five years.
 - (6) The type, name and location of every business or corporation which the applicant has been engaged during the preceding five years and the names and addresses of the applicant's employers and partners, if any, for the preceding five years.
 - (7) Whether the applicant has ever been convicted of a felony, crime or violation of any ordinance other than a traffic ordinance. If so, the applicant must furnish information as to the time, place and offense of all such convictions.
 - (8) The physical description of the applicant.
 - (9) Applicant's current personal financial statement and true copies of the applicant's federal and state tax returns for the two years prior to application.
 - (10) If the applicant does not manage the business, the name of the managers or other persons in charge of the business and all information concerning each of them required in subsections (b)(1) through (8) of this section.
- (c) *Partnerships.* If the applicant is a partnership:
- (1) The names and addresses of all general and limited partners and all information concerning each general partner required in subsections (b)(1) through (9) of this section.
 - (2) The names of the managing partners and the interest of each partner in the licensed business.
 - (3) A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to M.S.A. § 333.01, a certified copy of such certificate must be attached to the application.
 - (4) A true copy of the federal and state tax returns for partnership for the two years prior to application.
 - (5) If the applicant does not manage the business, the name of the managers or other persons in charge of the business and all information concerning each of them required in subsections (b)(1) through (8) of this section.
- (d) *Corporation and other organizations.* If the applicant is a corporation or other organization:
- (1) The name of the corporation or business form and, if incorporated, the state of the incorporation.
 - (2) A true copy of the certificate of incorporation, articles of incorporation or association agreement and bylaws shall be attached to the application. If the application is a foreign corporation, a certificate of authority as required by M.S.A. § 303.06 must be attached.
 - (3) The name of managers or the persons in charge of the business and all information concerning each manager, proprietor or agent required in subsections (b)(1) through (8) of this section.
 - (4) A list of all persons who control or own an interest in excess of five percent in such organization or business form or who are officers of the corporation or business form and all information concerning the persons required in subsections (b)(1) through (9) of this section. This subsection shall not apply to a corporation whose stock is publicly traded on a stock exchange and is applying for a license to be owned and operated by it.

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- (e) *Additional information to be provided by all applicants.* All applicants under this article shall also provide the following:
- (1) Whether the applicant holds a current pawnbroker, precious metal dealer or secondhand goods dealer license from any other governmental unit.
 - (2) Whether the applicant has previously been denied, or had revoked or suspended, a pawnbroker, precious metal dealer or secondhand dealer license from any other governmental unit.
 - (3) The location of the business premises.
 - (4) If the applicant does not own the business premises, a true and complete copy of the executed lease.
 - (5) The legal description of the premises to be licensed.
 - (6) Whether all real estate and personal property taxes that are due and payable for the premises to be licensed have been paid, and if not paid, the years and amounts that are unpaid.
 - (7) Whenever the application is for premises either planned or under construction or undergoing substantial alteration, the application must be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed.
 - (8) Such other information as the city council or issuing authority may require, including, but not limited to, a site plan as described in section 32-60.
- (f) *Application execution.* All applications for a license under this chapter must be signed and sworn to under oath or affirmation by the applicant. If the application is that of a natural person, it must be signed and sworn to by such person; if that of a corporation, by an officer thereof; if that of a partnership, by one of the general partners; and if that of an unincorporated association, by the manager or managing officer thereof.

(Code 1985, § 6.40.1(3)(B)1, 3)

Sec. 32-166. Investigation; fees.

- (a) *Required.* The city, prior to the granting of an initial or renewed pawnbroker dealer license, must conduct a preliminary background and financial investigation of the applicant. Any person having a beneficial interest in the license must be investigated.
- (b) *Duty of police chief.* The investigation shall be conducted by the police chief or designated agent to the council and the results reported to the council. The police chief must verify the facts stated in the application, and must report all convicted violations of state law, federal law, or provisions of this Code involving the applicant, interested persons, or the licensed premises while under that applicant's proprietorship. The applicant must furnish to the police department such evidence as the inspector may reasonably require in support of the statements set forth in the application.
- (c) *Investigation fee.* The applicant will be notified of the investigation fee prior to the council's consideration of the license application. The investigation fee is payable upon terms established by the city administrator.

(Code 1985, § 6.40.1(3)(B)4)

Sec. 32-167. Notice and conduct of public hearing.

A pawnbroker license will not be issued or renewed without a public hearing. Any person having an interest in or who will be affected by the proposed license will be permitted to testify at the hearing. The public hearing must be preceded by at least ten days published notice specifying the location of the proposed licensed business premises.

(Code 1985, § 6.40.1(3)(B)5)

Sec. 32-168. Persons ineligible for a license.

No licenses under this chapter will be issued to an applicant who is a natural person, a partnership if such applicant has any general partner or managing partner, a corporation or other organization if such applicant has any manager, proprietor or agent in charge of the business to be licensed, if the applicant is a minor at the time that the application is filed, is not of good moral character or reputation, or has been convicted of any crime directly related to the occupation licensed as prescribed by M.S.A. § 364.03(2) and has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensee under this chapter as prescribed by M.S.A. § 364.03(3).

(Code 1985, § 6.40.1(3)(B)6)

State law reference(s)—Similar provision, M.S.A. § 325J.03.

Sec. 32-169. Places ineligible for license.

A license will not be issued or renewed under this section for any place or for any business to which the following circumstances apply:

- (1) If taxes, assessments or other financial claims of the city or state on the licensee's business premises are delinquent and unpaid.
- (2) If the premises is located within 300 feet of a school or church.
- (3) Where operation of a licensed premises would violate the zoning provisions of this Code.
- (4) Where the applicant's present license was issued conditioned upon the applicant making specified improvements to the licensed premises or the property of the licensed premises which improvements have not been completed.

(Code 1985, § 6.40.1(15))

Sec. 32-170. Bond required.

Before a license will be issued, every applicant must submit a \$2,000.00 bond on the forms provided by the licensing authority. All bonds must be conditioned that the principal will observe all laws in relation to pawnbrokers, and will conduct business in conformity thereto, and that the principal will account for and deliver to any person legally entitled any goods which have come into the principal's business as a pawnbroker, or in lieu thereof, will pay the reasonable value in money to the person. The bond shall contain a provision that no bond may be canceled except upon 30 days written notice to the city, which shall be served upon the licensing authority.

(Code 1985, § 6.40.1(3)(C))

Sec. 32-171. Fees.

Fees associated with the pawnbroker's license include the annual license fee, an investigation fee and a billable transaction fee. The license fee shall reflect the cost of processing transactions and other related regulatory expenses as determined by the city council and shall be reviewed and adjusted, if necessary, annually. Licensees shall be notified in writing 30 days before any adjustment is implemented. Billable transaction fees shall be billed monthly and are due and payable within 30 days. All fee amounts are as provided in the city fee schedule.

(Code 1985, § 6.40.1(3)(D))

Sec. 32-172. Conditional licenses.

The council may grant an application for a new or renewed pawnbroker license conditioned upon the applicant making reasonable improvements to the proposed business premises or the property upon which the business premises is situated. Such improvements shall be required by city zoning or building code requirements, or other improvements related to the health, safety, welfare, or police power functions. The council, in granting a conditional license, will specify when the modifications must be completed. Failure to comply with the conditions of the license is grounds for the council to refuse to renew the license.

(Code 1985, § 6.40.1(16))

Sec. 32-173. License term.

The license year shall terminate on December 31 next succeeding the date of issuance of such license.

(Code 1985, § 6.40.1(3)(E))

Sec. 32-174. Change in ownership or manager requires new license.

- (a) Any change, directly or beneficially, in the ownership of any licensed pawnshop shall require the application for a new license and the new owner must satisfy all current eligibility requirements.
- (b) When a licensee places a manager in charge of a business, or if the named managers in charge of a licensed business changes, the licensee must complete and submit the appropriate application within 14 days. The application must include all appropriate information required in this division. Upon completion of an investigation of a new manager, the licensee must pay an amount equal to the cost of the investigation to assure compliance with this chapter.

(Code 1985, § 6.40.1(3)(B)2)

State law reference(s)—Similar provision, M.S.A. § 325J.03(b).

Sec. 32-175. License denial, suspension, or revocation.

- (a) Any license under this article may be denied, suspended or revoked for one or more of the following reasons:
 - (1) The proposed use does not comply with any health, building maintenance or other provisions of this Code or state law.
 - (2) The applicant or licensee has failed to comply with one or more provisions of this chapter.
 - (3) The applicant is not a citizen of the United States or a resident alien, or upon whom it is impractical or impossible to conduct a background or financial investigation due to the unavailability of information.
 - (4) Fraud, misrepresentation or bribery in securing or renewing the license.
 - (5) Fraud, misrepresentation or false statements made in the application and investigation for, or in the course of, the applicant's business.
 - (6) Violation within the preceding five years of any law relating to theft, damage or trespass to property, sale of a controlled substance or operating of a business.

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- (7) The owner of the premises licensed or to be licensed would not qualify for a license under the terms of this chapter.
- (b) The city shall notify the police department of any licensee whose license has expired or been surrendered, suspended, or revoked as provided in this section.
- (Code 1985, § 6.40.1(17))

State law reference(s)—Similar provision, M.S.A. § 325J.02.

Sec. 32-176. Transfer prohibited.

A license will be issued to the applicant only, and only for the business premises as described in the application. The license is effective only for the premises specified in the approved license application, and may not be transferred to any other person, partnership, corporation, or premises.

(Code 1985, § 6.40.1(19))

Sec. 32-177. Term; expiration and renewal; prorated license fees.

The license is issued for a period of one year beginning on January 1, except that if the application is made during the license year a license may be issued for the remainder of the license year for a monthly pro rata fee. An unexpired fraction of a month will be counted as a complete month. The license expires on December 31.

(Code 1985, § 6.40.1(20))

Sec. 32-178. Fee refunds.

Upon notification of one of the following actions the city clerk will refund a pro rata share of the license fee for a license to the licensee or the licensee's estate if:

- (1) The business ceases to operate because of destruction or damage.
- (2) The licensee dies.
- (3) The business ceases to be lawful for a reason other than a license revocation.
- (4) The licensee ceases to carry on the licensed business under the license.

(Code 1985, § 6.40.1(21))

Sec. 32-179. Continuation of business on death of licensee.

In the case of death of a licensee, the personal representative of the licensee may continue operation of the business for not more than 90 days after the licensee's death.

(Code 1985, § 6.40.1(22))

Sec. 32-180. Off-site storage facilities.

- (a) A license under this division authorizes the licensee to carry on its business only at the permanent place of business designated in the license. However, upon written request, the chief of police or chief's designee may approve an offsite locked and secured storage facility.

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- (b) The licensee shall permit inspection of the facility in accordance with this article. All provisions of this article regarding recordkeeping and reporting apply to the storage facility and its contents, and property shall be stored in compliance with all provisions of the city Code.
 - (c) The licensee must either own the building in which the business is conducted, and any approved offsite storage facility, or have a lease on the business premises that extends for more than six months.

(Code 1985, § 6.40.1(18))

Secs. 32-181—32-198. Reserved.

DIVISION 3. RECORDKEEPING AND REPORTING

Sec. 32-199. Transaction record generally.

At the time of any reportable transaction other than renewals, extensions, redemptions or confiscations, every licensee must immediately record in English the following information by using ink or other indelible medium on forms or in a computerized record approved by the police department:

- (1) A complete and accurate description of each item, including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identification mark on such an item.
- (2) The purchase price, amount of money loaned upon or pledged therefore.
- (3) The maturity date of the transaction and the amount due, including monthly and annual interest rates and all pawn fees and charges.
- (4) Date, time and place the item of property was received by the licensee and the unique alpha or numeric transaction identifier that distinguishes it from all other transactions in the licensee's records.
- (5) Full name, current residence address, current residence telephone number, date of birth and accurate description of the person from whom the item of property was received, including sex, height, weight, race, color of eyes and color of hair.
- (6) The identification number and state of issue of a current valid state driver's license or identification card or a photo identification card issued by another state or a province of Canada.
- (7) The signature of the person identified in the transaction.

(Code 1985, § 6.40.1(4)1—7)

State law reference(s)—Similar provisions, M.S.A. § 325J.05(b).

Sec. 32-200. Photographic, video and digital photographic records.

- (a) *Required.* The licensee shall take a color photograph or color video record of each customer involved in a billable transaction and every item pawned or sold that does not have a unique serial or identification number permanently engraved or affixed.
- (b) *Photograph standards.* Photographs taken pursuant to this section shall comply with the following:

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- (1) Photographs must be at least two inches in length by two inches in width. The major portion of the photograph must include an identifiable facial image of the person who pawned or sold the item. Items photographed must be accurately depicted.
 - (2) Photographs must be available to the police chief or the chief's designee, upon request. Photographs must be maintained in such a manner that the photograph can be readily matched and correlated with all other records of the transaction to which they relate.
 - (c) *Video photograph standards.* When video recordings are in use:
 - (1) The licensee must inform the person that he is being videotaped by displaying a sign of sufficient size in a conspicuous place on the premises.
 - (2) If a video photograph is taken, the video camera must focus on the person pawning or selling the item so as to include an identifiable image of that person's face. Items photographed by video must be accurately depicted.
 - (3) Video photographs must be electronically referenced by time and date so they can be readily matched and correlated with all other records of the transaction to which they relate.
 - (4) The licensee must keep the exposed videotape for three months, available to the chief of police or the chief's designee, upon request.
 - (d) *Digitized photographs.* Licensees must fulfill the color photograph requirements in subsections (a) and (b) of this section by submitting them as digital images, in a format specified by the city, electronically cross referenced to the reportable transaction they are associated with. Notwithstanding the digital images may be captured from required video recordings, this provision does not alter or amend any other requirements of this section.

(Code 1985, § 6.40.1(4)8, 9)

Sec. 32-201. Record of pawn renewals, extensions, redemptions and confiscations.

For renewals, extensions, redemptions and confiscations, the licensee shall provide the original transaction identifier, the date of the current transaction and the type of transaction.

(Code 1985, § 6.40.1(4)10)

Sec. 32-202. Daily reports to police department; billable transaction fees.

- (a) *Procedure.* Licensees must submit every reportable transaction to the police department daily using the automated pawn system in the following manner:
 - (1) Licensees must provide to the police department all reportable transaction information by transferring it from their computer to the automated pawn system using the current version of the automated pawn system interchange file specification.
 - (2) All required records must be transmitted completely and accurately after the close of business each day in accordance with standards and procedures established by the issuing authority.
 - (3) Any transaction that does not meet the automated pawn system interchange file specification must be corrected and resubmitted the next business day.
 - (4) The licensee must display a sign of sufficient size, in a conspicuous place on the premises, which informs patrons that all transactions are reported to the police department daily.

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- (b) *Technical issues.* Issues with the electronic system may arise from time to time and shall be subject to the following:
- (1) If a licensee is unable to successfully transfer the required reports by modem, the licensee must provide the police department, upon request, printed copies of all reportable transactions along with the video tapes for that date, by noon the next business day.
 - (2) If the problem is determined to be in the licensee's system and is not corrected by the close of the first business day following the failure, the licensee must continue to provide the required written and hard copy photographs and reports and shall be charged a daily reporting failure penalty in the amount provided in the city fee schedule until the error is corrected. The police department may, upon presentation of extenuating circumstances, delay the implementation of the daily reporting penalty.
 - (3) If the problem is determined to be outside the licensee's system, the licensee must continue to provide the required written and hard copy photographs and reports and resubmit all such transactions electronically when the error is corrected.
 - (4) If a licensee is unable to capture, digitize or transmit photographs required in this division, the licensee must immediately take all required photographs with a still camera, cross reference the photographs to the correct transaction and make the pictures available to the police department upon request.
 - (5) Regardless of the cause or origin of the technical problems that prevented the licensee from uploading their reportable transactions, upon correction of the problem, the licensee shall upload every reportable transaction from every business day the problem had existed.
- (c) *Billable transaction fees.* Licensees will be charged for each billable transaction electronically reported to the police department, at the rate specified in the city fee schedule.

(Code 1985, § 6.40.1(5))

Sec. 32-203. Immediate report of suspected stolen goods.

A licensed pawnbroker must report immediately to the police department any article pledged or received, or sought to be pledged or received, if the licensee has reason to believe that the article was stolen or lost.

(Code 1985, § 6.40.1(23))

Sec. 32-204. Records retention; inspection.

The records must at all reasonable times be open to inspection by the police department or department of licenses and consumer services. Data entries shall be retained for at least three years from the date of transaction. Entries of required digital images shall be retained a minimum of 90 days.

(Code 1985, § 6.40.1(4)11)

Secs. 32-205—32-231. Reserved.

DIVISION 4. TRANSACTION REQUIREMENTS

Sec. 32-232. Receipt to be issued.

Every licensee must provide a receipt to the party identified in every reportable transaction and must maintain a duplicate of that receipt for three years. The receipt must be signed by the pledgor, who must be given an exact copy of the receipt. The receipt shall include at least the following information:

- (1) The name, address and telephone number of the licensed business.
- (2) The date and time the item was received by the licensee.
- (3) Whether the item was pawned or sold or the nature of the transaction.
- (4) An accurate description of each item received, including, but not limited to, any trademark, identification number, serial number, model number, brand name or other identifying mark on such an item.
- (5) The signature or unique identifier of the licensee or employee who conducted the transaction.
- (6) The amount advanced or paid.
- (7) The monthly and annual interest rates, including all pawn fees and charges.
- (8) The last regular day of business by which the item must be redeemed by the pledgor without risk that the item will be sold and the amount necessary to redeem the pawned item on that date.
- (9) The full name, current residence address, current residence telephone number and date of birth of the pledgor or seller.
- (10) The identification number and state of issue of a current valid state driver's license or identification card or a photo identification card issued by another state or a province of Canada.
- (11) Description of the pledgor or seller, including approximate height and weight, sex, race, color of eyes and color of hair.
- (12) The signature of the pledgor or seller.
- (13) The statement that: "Any personal property pledged to a pawnbroker within the state is subject to sale or disposal when there has been no payment made on the account for a period of not less than 60 days past the date of the pawn transaction, renewal, or extension; no further notice is necessary. There is no obligation for the pledgor to redeem pledged goods."
- (14) The statement that: "The pledgor of this item attests that it is not stolen, it has no liens or encumbrances against it, and the pledgor has the right to sell or pawn the item."
- (15) The statement that: "This item is redeemable only by the pledgor to whom the receipt was issued, or any person identified in a written and notarized authorization to redeem the property identified in the receipt, or a person identified in writing by the pledgor at the time of the initial transaction and signed by the pledgor. Written authorization for release of property to persons other than the original pledgor must be maintained along with the original transaction record."
- (16) A blank line for the pledgor's signature.
- (17) The pledgor or seller shall sign a pawn ticket and receive an exact copy of the pawn ticket.
- (18) All printed statements as required by M.S.A. § 325J.04(2) or any other applicable statutes.

(Code 1985, § 6.40.1(6))

State law reference(s)—Similar provision, M.S.A. §§ 325J.04(2), 325J.05(a).

Sec. 32-233. Label required.

Licensees must attach a label to every item at the time it is pawned, purchased or received in inventory from any reportable transaction. Permanently recorded on this label must be the number or name that identifies the transaction in the shop's records, the transaction date, the name of the item and the description or model and serial number of the item as reported to the police department, whichever is applicable, and the date the item is out of pawn or can be sold, if applicable. Labels shall not be reused.

(Code 1985, § 6.40.1(12)(B))

Sec. 32-234. Additional requirements for motor vehicle title pawn transactions.

In addition to the other requirements of this division, a pawnbroker who holds a title to a motor vehicle as part of a pawn transaction shall:

- (1) Be licensed as a used motor vehicle dealer under M.S.A. § 168.27 and post such license on the pawnshop premises.
- (2) Verify that there are no liens or encumbrances against the motor vehicle with the state public safety department.
- (3) Verify that the pledgor has automobile insurance on the motor vehicle, as required by law.
- (4) Not sell a motor vehicle covered by a pawn transaction until 90 days after recovery of the motor vehicle.

(Code 1985, § 6.40.1(13))

State law reference(s)—Similar provisions, M.S.A. § 325J.095.

Sec. 32-235. Permitted pawn and interest charges.

- (a) A pawnbroker may contract for and receive a pawnshop charge not to exceed three percent per month of the principal amount advanced in the pawn transaction plus a reasonable fee for storage and services. A fee for storage and services may not exceed \$20.00 if the property is not in the possession of the pawnbroker.
- (b) The pawnshop charge allowed under this section shall be deemed earned, due, and owing as of the date of the pawn transaction and a like sum shall be deemed earned, due, and owing on the same day of the succeeding month. However, if full payment is made more than two weeks before the next succeeding date, the pawnbroker shall remit one-half of the pawnshop charge for that month to the pledgor.
- (c) Interest shall not be deducted in advance, nor shall any loan be divided or split as to yield greater interest or fees than would be permitted upon a single, consolidated loan or for otherwise evading any provisions of this section.
- (d) Any interest, charge, or fees contracted for or received, directly or indirectly, in excess of the amount permitted under this section, shall be uncollectible and the pawn transaction shall be void.
- (e) A schedule of charges permitted by this section shall be posted on the pawnshop premises in a place clearly visible to the general public.

(Code 1985, § 6.40(23))

State law reference(s)—Similar provision, M.S.A. § 325J.07.

Sec. 32-236. Prohibited transactions and acts.

- (a) *Underage, intoxicated or mentally disabled persons.* No person under the age of 18 years may pawn or sell or attempt to pawn or sell goods with any licensee, nor may any licensee receive any goods from a person under the age of 18 years. No licensee may receive any goods from a person of unsound mind or an intoxicated person.
- (b) *Identification required.* No licensee may receive any goods unless the seller presents identification in the form of a valid driver's license, a valid state identification card, or current valid driver's license or identification card issued by the state or providence of residency of the person from whom the item was received.
- (c) *Pawning property of another.* No person may pawn, pledge, sell, consign, leave or deposit any articles of property not their own; nor shall any person pawn, pledge, sell, consign, leave or deposit the property of another, whether with permission or without; nor shall any person pawn, pledge, sell, consign, leave or deposit any article of property in which another has a security interest; with any licensee.
- (d) *Giving false information.* No person seeking to pawn, pledge, sell, consign, leave or deposit any article of property with any licensee shall give a false or fictitious name; nor give a false date of birth; nor give a false or out of date address of residence or telephone number; nor present a false or altered identification or the identification of another; to any licensee.

(Code 1985, § 6.40.1(14)(A)—(C), (E), (K))

Sec. 32-237. Prohibited acts by licensees.

No pawnbroker or any clerk, agent, or employee of a pawnbroker shall:

- (1) Make any false entry in the records of pawn transactions;
- (2) Falsify, obliterate, destroy, or remove from the place of business the records, books, or accounts relating to the licensee's pawn transactions;
- (3) Refuse to allow an appropriate law enforcement agency, the attorney general, or any other duly authorized city, state or federal law enforcement officer to inspect the pawn records or any pawn goods in the person's possession during the ordinary hours of business or other times acceptable to both parties;
- (4) Fail to maintain a record of each pawn transaction for three years;
- (5) Accept a pledge or purchase property from a person under the age of 18 years;
- (6) Make any agreement requiring the personal liability of a pledgor or seller, or waiving any provision of this section, or providing for a maturity date less than one month after the date of the pawn transaction;
- (7) Fail to return pledged goods to a pledgor or seller, or provide compensation as set forth in M.S.A. § 325J.09, upon payment of the full amount due the pawnbroker unless either the date of redemption is more than 60 days past the date of the pawn transaction, renewal, or extension and the pawnbroker has sold the pledged goods pursuant to M.S.A. § 325J.06, or the pledged goods have been taken into custody by a court or a law enforcement officer or agency;
- (8) Sell or lease, or agree to sell or lease, pledged or purchased goods back to the pledgor or seller in the same, or a related, transaction;
- (9) Sell or otherwise charge for insurance in connection with a pawn transaction; or

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- (10) Remove pledged goods from the pawnshop premises or other storage place approved by the city at any time before the expiration of the redemption period pursuant to M.S.A. § 325J.06. However:
- a. A pawnbroker is permitted to return pledged goods to the borrower at any time during the redemption period;
 - b. A pawnbroker is permitted to sell the pledged goods or remove the pledged goods from the pawnshop premises or other storage at any time after the expiration of the redemption period set forth in M.S.A. § 325J.06; and
 - c. A pawnbroker who purchases goods not involving a pawn transaction is permitted to sell or remove the purchased goods from the pawnshop premises or other storage 31 days or later from the purchase transaction date.

State law reference(s)—Similar provisions, M.S.A. § 325J.08.

Sec. 32-238. Purchase of certain weapons prohibited.

A licensed pawnbroker may not accept for consignment or sale any revolver, pistol, sawed-off shotgun, automatic rifle, blackjack, switchblade, knife, or other similar weapons or firearms, unless the licensee is in possession of a current valid federal firearms license or federal firearms pawnbroker's license. This section is not intended to restrict the legitimate retailing of firearms under a federal firearms license.

(Code 1985, § 6.40.1(24))

Sec. 32-239. Redemption period for pawned items; authorization for release.

- (a) Any person pledging, pawning or depositing an item for security must have a minimum of 90 days from the date of that transaction to redeem the item before it may be forfeited and sold. During the 90-day holding period, items may not be removed from the licensed location except as otherwise specifically provided in this division.
- (b) Licensees are prohibited from redeeming any item to anyone other than the person to whom the receipt is issued, or to any person identified in a written and notarized authorization to redeem the property identified in the receipt, or to a person identified in writing by the pledger at the time of the initial transaction and signed by the pledger, or with approval by the police chief or his designee.
- (c) Written authorization for release of the property to persons other than the original pledger must be maintained along with the original transaction record.

(Code 1985, § 6.40.1(7))

State law reference(s)—Similar provisions, M.S.A. § 325J.09.

Sec. 32-240. Failure to redeem; pawnbroker's rights.

- (a) A pledgor shall have no obligation to redeem pledged goods or make any payment on a pawn transaction. Pledged goods not redeemed within 90 days of the date of the pawn transaction, renewal, or extension shall automatically be forfeited to the pawnbroker, and qualified right, title, and interest in and to the goods shall automatically vest in the pawnbroker.
- (b) The pawnbroker's right, title, and interest in the pledged goods is qualified only by the pledgor's right, while the pledged goods remain in possession of the pawnbroker and not sold to a third party, to redeem the goods by paying the loan plus fees or interest accrued up to the date of redemption.

(c) A pawn transaction that involves holding only the title to property is subject to M.S.A. ch. 68A or 336.

(Code 1985, § 6.40.1(8))

State law reference(s)—Similar provision, M.S.A. § 325J.06.

Sec. 32-241. Required holding period for sold or traded items; redemption period.

Any item purchased by or accepted in trade by a licensee must not be sold or otherwise transferred for 30 days from the date of the transaction. An individual may redeem an item 72 hours after the item was received on deposit, excluding Sundays and legal holidays.

(Code 1985, § 6.40.1(9))

Sec. 32-242. Risk of loss.

- (a) Any person to whom the receipt for pledged goods was issued, or any person identified in a written and notarized authorization to redeem the pledged goods identified in the receipt, or any person identified in writing by the pledgor at the time of the initial transaction and signed by the pledgor shall be entitled to redeem or repurchase the pledged goods described on the ticket.
- (b) If goods are lost or damaged while in the possession of the pawnbroker, the pawnbroker shall compensate the pledgor, in cash or replacement goods acceptable to the pledgor, for the fair market value of the lost or damaged goods. Proof of compensation shall be a defense to any prosecution or any civil action.

(Code 1985, § 6.40.1(10))

State law reference(s)—Similar provisions, M.S.A. § 325J.09.

Sec. 32-243. Law enforcement hold on or confiscation of property.

- (a) *Investigative hold.* Whenever a law enforcement official from any agency notifies a licensee not to sell an item, the item must not be sold or removed from the premises. The investigative hold shall be confirmed in writing by the originating agency within 72 hours and will remain in effect for 30 days from the date of initial notification, or until the investigative order is cancelled, or until an order to hold or confiscate is issued, pursuant to subsection (b) of this section, whichever comes first.
- (b) *Order to hold.* Whenever the police chief or his designee notifies a licensee not to sell an item, the item must not be sold or removed from the licensee's premises until authorized to be released by the police chief or his designee. The order to hold shall expire 90 days from the date it is placed, unless police chief or his designee determines the hold is still necessary and notifies the licensee in writing.
- (c) *Order to confiscate.* If an item is identified as stolen or evidence in a criminal case, the chief of police or the chief's designee may physically confiscate and remove it from the shop pursuant to a written order from the police chief or his designee or place the item on hold or extend the hold as provided in subsection (b) of this section and leave it in the shop. When an item is confiscated, the person doing so shall provide identification upon request of the licensee and shall provide the licensee with the name and telephone number of the confiscating agency and investigator and the case number related to the confiscation.
- (d) *Release of hold or confiscation.* When an order to hold or to confiscate is no longer necessary, the police chief or his designee shall so notify the licensee.

(Code 1985, § 6.40.1(11))

Chapter 34 SIGNS²⁸

ARTICLE I. IN GENERAL

Sec. 34-1. Purpose and intent.

This chapter is intended to:

- (1) Establish standards which permit businesses a reasonable and equitable opportunity to advertise.
- (2) Preserve and promote civic beauty and prohibit signs which would detract from this objective because of size, shape, height, location, condition, cluttering or illumination.
- (3) Ensure that signs do not create safety hazards.
- (4) Preserve and protect property values.
- (5) Permit reasonable opportunity for residents and businesses to communicate with the public in accordance with the principles of free speech.

(Code 1985, § 13.01)

Sec. 34-2. Conflicts with zoning regulations.

If there is a conflict between this chapter and the city zoning regulations, the zoning regulations shall prevail.

(Code 1985, § 13.02)

Sec. 34-3. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Address sign means a sign communicating only a street address.

Alteration means any major alteration to a sign excluding routine maintenance, painting or change of copy.

Area identification sign.

- (1) The term "area identification sign" means a freestanding sign identifying the name of a:
 - a. Single- or two-family residential subdivision consisting of 20 or more lots;
 - b. Residential planned unit development;
 - c. Multiple residential complex consisting of three or more independent operations;
 - d. Single business consisting of three or more separate structures;

²⁸State law reference(s)—Signs and billboards along state highways, M.S.A. ch. 173; prohibited advertising devices, M.S.A. § 173.15.

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- e. Manufactured home court; or
 - f. Any integrated combination of subsection (1) of this definition.
- (2) The term "area identification sign" are those that only identify an area, complex or development and not the name of individual owners, tenants, or advertising.

Banners means attention getting devices which resemble flags and are of a paper, cloth or plastic-like consistency.

Building facade means that portion of the exterior elevation of a building extending from grade to the top of the parapet wall or eaves and the entire width of the building elevation.

Business sign means sign identifying a business or group of businesses, either retail or wholesale, or any sign identifying a profession or used in the identification or promotion of any principal commodity or service, including entertainment, offered or sold upon the premises where the sign is located.

Canopy sign means a message or identification affixed to a canopy or marquee that provides a shelter or cover over the approach to any building entrance.

Construction sign means a sign at a construction site identifying the project or the name of the architect, engineer, contractor, financier or other involved parties.

Directional sign means a sign erected with the address or name of a business, institution, church or other use or activity plus directional arrows or information on location.

Directory sign means an exterior informational wall sign identifying the names of businesses served by a common public entrance in a shopping center or office building.

Flashing sign means an illuminated sign upon which the artificial light is not kept constant in terms of intensity or color when the sign is illuminated.

Freestanding sign means self-supported sign not affixed to another structure.

Identification sign means a sign which identifies the business, owner, manager, resident or address of the premises where the sign is located and which contains no other material.

Illuminated sign means sign illuminated by an artificial light source either directed upon it or illuminated from an interior source.

Informational sign means any sign giving information to employees, visitors or delivery vehicles, but containing no advertising or identification. Gas price and menu board signs are informational signs and shall not be included in calculating the size limitations imposed within the respective zoning district.

Marquee means a canopy.

Menu board means a sign containing a food price list for restaurant customers but containing no advertising or identification.

Nonprofit organization means a corporation formed under M.S.A. ch. 317, a church, community or civic group.

Parapet means a low wall which is located on a roof of a building.

Portable sign means a sign designed to be movable from one location to another and which is not permanently attached to the ground, sales display device, or structure.

Public entrance means a passage or opening which affords entry and access to the general public.

Public entrance, common, means a public entrance providing access for the use and benefit of two or more tenants or building occupants.

Real estate sign means a business sign placed upon property advertising that particular property for sale or rent.

Roof sign means sign erected, constructed or attached wholly or in part upon or over the roof of a building.

Sign means the use of words, numerals, figures, devices or trademarks by which anything is made known such as individuals, firms, professionals, businesses, services or products and which is visible to the general public.

Sign area means the area within the marginal lines of the surface of a sign which bear the advertisement or, in the case of messages, figures or symbols attached directly to a building or sign structure, that area which is included in the smallest rectangle or series of geometric figures used to circumscribe the message, figure or symbol displayed thereon.

Sign, maximum height of, means the vertical distance from the grade to the top of the sign.

Sign structure means the supports, uprights, bracing and framework for a sign, including the sign area.

Street frontage means the proximity of a parcel of land to one or more streets. An interior lot has one street frontage and a corner lot has two or more frontages.

Temporary sign means a sign erected or displayed for a specified period of time.

Wall sign means a sign affixed to the exterior wall of a building and which is parallel to the building wall. A wall sign does not project more than 12 inches from the surface to which it is attached, nor extend beyond the top of the parapet wall.

(Code 1985, § 13.03)

Sec. 34-4. Existing and nonconforming signs.

- (a) Except for signs determined to create a public safety hazard due to content or due to disrepair and condition, or illegally established signs, all legally established signs existing upon the effective date of the ordinance from which this chapter is derived shall not be enlarged or reconstructed, but may be continued at the size and in the manner of operation existing upon such date, provided that the principal use of the subject property is not discontinued for more than one year. After one year, a nonconforming sign identifying an unoccupied parcel or building shall be considered abandoned, requiring its removal.
- (b) A nonconforming sign may not be replaced, enlarged, structurally altered except to bring it into compliance with the provisions of this chapter, re-established after its removal or discontinuance, or repaired or otherwise restored unless the damage is to less than 50 percent of sign structure.
- (c) Nothing in this chapter shall be construed as relieving the owner or user of a legal nonconforming sign, or owner of the property on which the legal nonconforming sign is located, from the provisions of this chapter regarding safety, maintenance, and repair of signs; provided, however, that any repainting, cleaning, and other normal maintenance or repair of the sign or sign structure shall not modify the sign structure or copy in any way which makes it more nonconforming or the sign shall lose its legal nonconforming status. Notwithstanding anything in this subsection to the contrary, message or copy on nonconforming signs may be changed, subject to required permitting, provided such change does not increase the nonconformity.
- (d) When the principal use of land is legally nonconforming under chapter 50, all existing or proposed signs in conjunction with that land, shall be considered conforming if they are in compliance with the sign provisions for the most restrictive zoning district in which the principal use is allowed.

(Code 1985, § 13.04)

Sec. 34-5. Prohibited signs.

- (a) *Generally.* The signs detailed in this section are prohibited, except to the extent otherwise provided and subject to the conditions set forth in the following subsections.
 - (b) *Advertising signs.* Advertising signs are prohibited in the city except:
 - (1) Signs advertising nonprofit organizations are permitted subject to the restrictions imposed within the zoning district in which the sign is located.
 - (2) Real estate development project signs advertising lots or property for sale, may be located off-premises by permit. The permit shall be renewable annually and conditioned upon documentation allowing such sign or structure by the property owner upon which it is to be located. The sign shall conform to the size restriction of signs imposed within the respective district in which the sign is located or a maximum of 64 square feet each side, whichever is greater.
 - (c) *Advertising and business signs attached to equipment.* Advertising or business signs on or attached to equipment such as semi-truck trailers are prohibited when signing is a principal use of the equipment on either a temporary or permanent basis.
 - (d) *Motion signs and flashing signs.* Motion signs and flashing signs are prohibited except time and temperature signs and barber poles.
 - (e) *Projecting signs.* Projecting signs except as provided for in section 34-106 are prohibited.
 - (f) *Roof signs.* Roof signs are prohibited except that a business sign may be placed on the fascia or marquee of a building, provided it does not extend above the highest elevation of the building, excluding chimneys. Roof signs shall be thoroughly secured and anchored to the frames of the building over which they are constructed and erected. No portion of roof signs shall extend beyond the periphery of the roof.
 - (g) *Outdated business signs.* Business signs which advertise an activity, business, product or service no longer produced or conducted on the premises upon which the sign is located are prohibited. Where the owner or lessor of the premises is seeking a new tenant, such signs may remain in place for not more than 30 days from the date of vacancy.
 - (h) *Wall graphics.* Wall graphics are prohibited.
 - (i) *Portable signs.* Portable signs except as permitted in section 34-6(12) are prohibited.
 - (j) *Signs creating traffic hazards.* Signs shall not create a hazard to the safe, efficient movement of vehicular or pedestrian traffic. No private sign shall contain words which might be construed as traffic controls, such as stop, caution, warning, unless the sign is intended to direct traffic on the premises.
 - (k) *Signs on trees, fences or utility poles.* No signs, guys, stays, or attachments shall be erected, placed or maintained on rocks, fences or trees nor interfere with any electric light, power, telephone or other utility wires, structures or the supports thereof.
 - (l) *Bench signs.* Bench signs except by special permit of the council are prohibited.
 - (m) *Home occupation signs.* Home occupation signs are prohibited.
- (Code 1985, § 13.06(2))

Sec. 34-6. Standards and specifications generally.

Signs within the city shall comply with the following standards and specifications:

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- (1) *Building code applicable.* The design and construction standards as set forth the city's building codes shall apply to signs under this chapter.
 - (2) *Electrical code applicable; electrical service to be underground.* The installation of electrical signs shall be subject to the city and state electrical code. Electrical service to such sign shall be underground.
 - (3) *Noncommercial, advertising and business signs subject to same regulations.* Signs containing noncommercial speech are permitted anywhere that signs containing commercial speech are permitted, subject to the same regulations applicable to such signs. It is not the intent of this subdivision to increase the overall allowable sign numbers or sizes of any parcel.
 - (4) *Illumination not to interfere with traffic.* Illuminated signs shall be shielded to prevent lights from being directed at oncoming traffic in such brilliance that it impairs the vision of the driver. Nor shall such signs interfere with or obscure an official traffic sign or signal. This includes indoor signs which are visible from public streets.
 - (5) *Proper maintenance required.* Signs and sign structures shall be properly maintained and kept in a safe condition. Sign or sign structures which are rotted, unsafe, deteriorated or defaced shall be repainted, repaired or replaced by the permit, owner or agent of the building upon which the sign stands.
 - (6) *Wall and roof attachments required approval.* No sign shall be attached to or be allowed to hang from any building until all necessary wall and roof attachments have been approved by the building official.
 - (7) *Attachment restricted; interference with utility poles and wires prohibited.* No signs, guys, stays, or attachments shall be erected, placed or maintained on rocks, fences or trees nor interfere with any electric light, power, telephone or other utility wires, structures, or the supports thereof.
 - (8) *Certain signs require permit; number of permits restricted.* The use of searchlights, banners, pennants and similar devices shall require a permit. The permit shall be valid for no more than 15 consecutive days. No more than two permits per business shall be granted during any 12-month period. Signs requiring permits shall display in a conspicuous manner the permit sticker or sticker number.
 - (9) *Required setbacks.* No sign or sign structure shall be closer to any lot line than a distance equal to one-half the minimum required yard setback. No sign shall be placed within any drainage or utility easement.
 - (10) *Clear ingress and egress to be maintained.* No sign or sign structure shall be erected or maintained that prevents free ingress or egress from any door, window or fire escape. No sign or sign structure shall be attached to a standpipe or fire escape.
 - (11) *Angle and area restrictions.* A freestanding sign or sign structure constructed so that the faces are not back-to-back, shall not have an angle separating the faces exceeding 20 degrees unless the total area of both sides added together does not exceed the maximum allowable sign area for that district.
 - (12) *Portable sign illumination and use restriction; permit required.* Portable signs may not exceed 32 square feet and may not be illuminated with any flashing device. Use of a portable sign shall require a permit. The permit shall be valid for no more than 15 consecutive days. No more than two permits per business shall be granted during any 12-month period.
 - (13) *Residential area view to be screened if sign is residentially prohibited.* Signs prohibited in residential districts shall be positioned so that the copy is not visible from residential uses or districts along adjoining side and rear yard property lines.
 - (14) *Address signs required.* Except for farm buildings, at least one address sign identifying the correct property number as assigned by the city shall be required on each principal building in all districts. The number shall be at least three inches in height. An address sign of up to 15 square feet shall not be counted against the allowable sign area on a property.

(Code 1985, § 13.05)

Sec. 34-7. Inspection.

All signs for which a permit is required shall be subject to inspection by the building official. The building official may order the removal of any sign that is not maintained in accordance with the maintenance provisions of this chapter.

(Code 1985, § 13.09)

Sec. 34-8. Permit procedure; variances.

- (a) *Permit required unless exception applies.* Except as otherwise specifically provided in this chapter, it is unlawful for any person to erect, construct, alter, rebuild or relocate any sign or structure until a permit has first been issued by the city.
- (b) *Application.* The following information for a sign permit shall be supplied by an applicant if requested by the city:
 - (1) Name, address and telephone number of person making application.
 - (2) Name, address and telephone number of person owning sign.
 - (3) A site plan to scale showing the location of lot lines, building structures, parking areas, existing and proposed signs and any other physical features.
 - (4) Plans, location and specifications and method of construction and attachment to the buildings or placement method in the ground.
 - (5) Copy of stress sheets and calculations showing that the structure is designed for dead load and wind pressure in any direction in the amount required by this and all other laws and provisions of this Code.
 - (6) Written consent of the owner or lessee of any site on which the sign is to be erected.
 - (7) Any electrical permit required and issued for the sign.
 - (8) Such other information as the city shall require to show full compliance with this and all other laws and provisions of this Code.
- (c) *Issuance.* The building official, upon the filing of an application for a permit, shall examine such plans, specifications and other data and the premises upon which it is proposed to erect the sign. If it appears that the proposed structure complies with the requirements of this chapter and all other laws and provisions of this Code, the permit shall be issued.
- (d) *Lapse.* If the work authorized under a permit has not been completed within 60 days after the date of issuance, the permit shall be null and void.
- (e) *When council approval is required.* When this chapter requires council approval for a sign, the application shall be processed in accordance with the procedural and substantive requirements of chapter 50 for a conditional use permit.
- (f) *Variances.* The council may, upon application, grant a variance from the terms of this chapter. The request for a variance shall be processed in accordance with the procedural and substantive requirements of chapter 50.
- (g) *Fees.* Fees for the review and processing of sign permit applications and variance requests shall be imposed in accordance with the city fee schedule.

(Code 1985, § 13.10)

Sec. 34-9. Enforcement.

This chapter shall be administered and enforced by the building official. The building official may institute in the name of the city appropriate actions or proceedings against a violator.

(Code 1985, § 13.11)

Sec. 34-10. Violation a misdemeanor.

Every person violates a section, or provision of this chapter, when he performs an act thereby prohibited or declared unlawful or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

(Code 1985, § 13.99)

Secs. 34-11—34-38. Reserved.

ARTICLE II. STANDARDS, SPECIFICATIONS AND CONDITIONS

DIVISION 1. GENERALLY

Sec. 34-39. Allowed signs generally; no permit required.

The following signs do not require a sign permit but must comply with the standards, specification and conditions as stated:

- (1) *Public signs.* Signs of a public, noncommercial nature, including safety signs, directional signs to public facilities, trespassing signs, traffic signs, signs indicating scenic or historical points of interest, memorial plaques and the like, when erected by or on behalf of a public official or employee in the performance of official duty are allowed.
- (2) *Identification signs.* Identification signs not exceeding three square feet are allowed.
- (3) *Informational signs.* Informational signs not exceeding 16 square feet are allowed.
- (4) *Non-commercial signs; exemption.* Noncommercial signs are allowed in commercial, industrial, agricultural and institutional zones not exceeding eight square feet and in all residential zones not exceeding four square feet, subject to the following:
 - a. The sign must contain the name and address of the person responsible for such sign, and that person shall be responsible for its removal.
 - b. Such signs shall remain for no longer than 110 days in any calendar year. The city shall have the right to remove and destroy signs not conforming to this chapter and shall assess a fee in the amount provided in the fee schedule for each sign removed by the city.
 - c. All noncommercial signs of any size may be posted in any number from 46 days before the state primary in a state general election year until ten days following the state general election. These

exempted noncommercial signs are not allowed to be placed less than ten feet from the curb of a public street.

- (5) *Holiday signs.* Signs or displays which contain or depict a message pertaining to a religious, national, state or local holiday and no other matter which are displayed for a period not to exceed 75 days in any calendar year are allowed.
- (6) *Construction signs.* A non-illuminated construction sign confined to the site of the construction, alteration or repair is allowed. Such sign must be removed within two years of the date of issuance of the first building permit on the site or when the particular project is completed, whichever is sooner. One sign shall be permitted for each street the project abuts. No sign may exceed 32 square feet in the R-R, R-1, R-2, R-3, and R-MH districts or 64 square feet in the A-1, R-4, R-5, R-6, R-7 and R-B business and industrial districts.
- (7) *Window signs.* Window signs shall not exceed 50 percent of the total area of the window in which they are displayed.
- (8) *Other signs.* Integral and OSHA signs are allowed without permit.

(Code 1985, § 13.06(1))

Sec. 34-40. Real estate signs advertising property for sale or rent.

Property for sale and to rent signs shall be permitted without a permit subject to the following conditions:

- (1) *Six or less residential dwelling units.* When six or less dwelling units (or lots for residential development) are posted for sale or rent, including single-family residences, no more than one such sign per lot, except on a corner lot two signs, one facing each street, shall be permitted. No such signs shall exceed 16 square feet in area or be illuminated. Each such sign must be devoted solely to the sale or rental of the property being offered and must be removed immediately upon the sale or rental of the property. Each sign must be placed only upon the property offered for sale or rent.
- (2) *Seven or more residential dwelling units.* When more than six dwelling lots (or lots for residential development purposes) are offered for sale or rental by the same party, signs advertising such sale or rental may be constructed therefor in any district. Signage may include one sign facing each public street providing access to the property being offered. Each such sign shall not exceed 32 square feet in area, shall be located at least 100 feet from any preexisting home, and shall be removed within one year from the date of building permit issuance or when less than six units remain for sale or rent, whichever is less. The sign shall fully comply with the setback requirement for the zoning district in which the property is located.
- (3) *Industrial or commercial property.* For posting industrial or commercial sale or rental of real property, one sign facing each public street providing access to the property being offered is allowed. Each sign shall not exceed 64 square feet in area and must be devoted solely to the sale or rental of the property being offered and must be removed immediately upon the sale or rental of the last property offered at that location. The sign may not be located closer to the property line than 50 percent of the setback required within the particular zoning district in which the property is located.
- (4) *Off-site, temporary directional signage.* Residential units, including single-family, two-family, or townhouse units for sale or rent may display off-site, temporary directional signs generally during the period that the units are open for inspection to prospective buyers/renters subject to the conditions of this section. Signs which violate any of these provisions, or interfere with the safe use of the public streets or trails by vehicles, pedestrians, bicyclists, or others may be removed at the discretion of the city.

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- (5) *Off-site, temporary advertising property for sale or rent.* Off-site temporary signs are allowed without special permit when related to providing directions to units that are for sale or rent, and open for inspection, subject to the following:
- a. Such signs may be displayed Monday through Friday from one-half hour prior to opening, to one-half hour after closing. For weekend open houses, such signs may be displayed no earlier than 7:00 p.m. on Friday to 7:00 a.m. on Monday.
 - b. Signs shall be for the purpose of providing directions only. No more than one sign per unit may be displayed at any street intersection, and no signs may be displayed between intersections.
 - c. Signs may be located on the public right-of-way but shall be no closer than ten feet from the curb, or edge of pavement where no curb exists.
 - d. Signs shall be freestanding and shall not be attached to any other structure such as traffic control signs, utility poles, or other similar devices.
 - e. Signs must be located so as to avoid interference with pedestrian or bicycle trails, and to avoid conflicts with traffic circulation and visibility.
 - f. Signs shall be no larger than four square feet in area, and no more than three feet in height.
 - g. Signs may incorporate directional arrows, real estate company or agent names, and addresses or project names of the subject real estate. No balloons, banners, or other attachments shall be permitted.

(Code 1985, § 13.06(1))

Sec. 34-41. Directional signs.

- (a) *Directional on-premises signs.* Directional on-premises signs not larger than four square feet are allowed. The number of signs shall not exceed four unless approved by the council. The council may allow a combination of such signs, not to exceed a total of 16 square feet, where such signage is deemed necessary for public safety.
- (b) *Directional off-premises signs except in zone B-5 or PUD.* Directional off-premises signs in all zoning districts except the B-5 (Central Business District) or the PUD (Planned Unit Development District) shall be limited to situations where access is confusing and traffic safety could be jeopardized or traffic could be inappropriately routed through residential streets. The size and design of the sign shall be approved by the council and shall contain no advertising.
- (c) *Directional off-premises signs in zone B-5 or PUD.* For directional off-premises signs located in the B-5 or PUD district may display temporary, off-premises signs by express permit issued by the council where access to commercial areas requires directional signage from the city's arterial roads. Such signs may, at the discretion of the council, be permitted under the following conditions:
 - (1) Such signs shall be no more than four square feet in area.
 - (2) No such signs shall be permitted within the right-of-way of any public street or highway.
 - (3) An application for a temporary off-premises sign shall be accompanied by a written statement of permission from the owner of the private property on which the sign is to be located. Such statement shall include an express grant of permission for city inspectors to enter the property for the purpose of inspecting or removing the signs.

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- (4) Any permit may be granted for no more than four consecutive days of display, nor shall any business or property be granted more than one such permit in any 30-day period. Each permit may allow up to two signs in different locations.
 - (5) Each sign permitted shall have a weather-resistant sticker attached to the sign indicating the permittee's name, telephone number, approved location, and dates of display. Such stickers shall be supplied by the applicant.
 - (6) No permit shall be granted for more than one such sign within 300 feet of any other temporary off-premises sign.
- (d) *Off-site, temporary directional signage.* Retail facilities in the B-3, B-4, B-5, and PUD districts may display off-site temporary directional signage pursuant to this subsection. Signs which violate any of the following provisions, or interfere with the safe use of the public streets or trails by vehicles, pedestrians, bicyclists, or others may be removed at the discretion of the city:
- (1) Off-site, temporary signs are allowed with the issuance of a special permit, issued on an annual basis, when related to providing directions to retail facilities on an intermittent basis. Each permit shall provide for the location of two such signs with a fee established by the city council. Such signs may be displayed for a maximum of five days per month.
 - (2) Signs shall be for the purpose of providing directions only. No more than one sign per unit may be displayed at any street intersection, and no signs may be displayed between intersections.
 - (3) Such signs may be located on the public right-of-way but shall be no closer than ten feet from the curb, or edge of pavement where no curb exists.
 - (4) Such signs shall be freestanding and shall not be attached to any other structure such as traffic control signs, utility poles, or other similar devices.
 - (5) Such signs must be located so as to avoid interference with pedestrian or bicycle trails and sidewalks, and to avoid conflicts with traffic circulation and visibility.
 - (6) Such signs shall be no larger than four square feet in area, and no more than three feet in height.
 - (7) Such signs may incorporate directional arrows, business names, and addresses of the subject business. No balloons, banners, or other attachments shall be permitted.

(Code 1985, § 13.06(1))

Sec. 34-42. Rummage sale signs.

Rummage sale signs are allowed, subject to the following:

- (1) Such signs shall not be posted until the date of the sale and shall be removed within one day after the end of the sale and shall not exceed six square feet.
- (2) Rummage sale signs shall not be located in any public right-of-way, or on utility poles or equipment. The city shall have the right to remove and destroy signs not conforming to this article. The city shall assess a fee in the amount provided in the city fee schedule for each sign removed by the city.
- (3) Rummage sale signs advertising sales within the city, and complying with these requirements, may be located off-site, on private property for the purpose of directing traffic to the sale. Owners of such signs shall be required to obtain permission from the owner of the property on which the sign is to be located.

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- (4) Signs shall contain the name, address, and dates of the sale. This section shall not be construed to abridge the right of the private property owner to make more restrictive requirements or to remove such signs placed on their property.

(Code 1985, § 13.06(1))

Secs. 34-43—34-72. Reserved.

DIVISION 2. DISTRICT SPECIFIC RESTRICTIONS

Sec. 34-73. A-1, R-R, R-1, R-2, R-3, R-4, R-5, and R-MH districts.

In A-1, R-R, R-1, R-2, R-3, R-4, R-5 and R-MH districts the following signs are allowed subject to the stated conditions:

- (1) *Institutional identification.* For signs identifying an institutional use such as a government facility, school building, or religious institution, except as otherwise specifically provided in this division, only one sign per principal street frontage. Total sign area may not exceed 64 square feet with a maximum height of ten feet for freestanding signs.
- (2) *Residential area identification.* Only one sign for each area. Sign area may not exceed 32 square feet with a maximum height of eight feet for freestanding signs.

(Code 1985, § 13.07(1))

Sec. 34-74. R-6, R-7, and R-B districts.

In R-6, R-7 and R-B districts, the following signs are allowed subject to the stated conditions:

- (1) *Institutional identification.* Except as provided for in division 3 of this article, only one sign per principal use. Sign area may not exceed 64 square feet with a maximum height of ten feet for freestanding signs.
- (2) *Residential area identification.* Only one sign for each area. Sign area may not exceed 64 square feet with a maximum height of ten feet for freestanding signs.
- (3) *Single or double occupancy multiple family sign.* The total sign area may not exceed ten percent of the total front building facade, except that both front and side facades may be counted on a corner lot. Signs chosen to comprise the total sign area shall be consistent with the following provisions:
 - a. *Freestanding.* Not more than one freestanding sign. Sign area may not exceed 64 square feet with a maximum height of ten feet.
 - b. *Wall, canopy or marquee.* Not more than one wall, canopy or marquee sign per building. However, on corner lots two such signs are allowed, one per street frontage. Individual sign area may not exceed 64 square feet.

(Code 1985, § 13.07(2))

Sec. 34-75. B-2 district.

In B-2 district, the following signs are allowed subject to the stated conditions:

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- (1) *Area identification.* Only one sign. Sign area may not exceed 75 square feet with a maximum height of 20 feet for freestanding signs.
 - (2) *Single or double occupancy multiple-family signs.* The total sign area for the subject property may not exceed 15 percent of the total front building facade except both front and side facades may be counted on a corner lot. Signs chosen to comprise the total sign area shall be consistent with the following provisions:
 - a. *Freestanding.* Not more than one sign. Sign area may not exceed 64 square feet with a maximum height of 20 feet.
 - b. *Wall, canopy or marquee.* Wall signs shall be allowed in any number, provided that no such sign faces abutting residentially zoned property and total sign area continues to comply with the requirements of this section.

(Code 1985, § 13.07(3))

Sec. 34-76. B-3, B-4, B-5, B-6, B-W districts.

In B-3, B-4, B-5, B-6, B-W districts, the following signs are allowed subject to the stated conditions:

- (1) *Area identification.* Only one sign. Sign area may not exceed 100 square feet with a maximum height of 25 feet for freestanding signs. In the B-5 Central Business District, freestanding signs shall be of a monument style of construction. Such signs shall be attached to the ground no less than 80 percent of the total width of the sign, in contract to a pole type of support. Monument signs in the B-5 district may be no greater than ten feet in height and 60 square feet in area, may be constructed with a zero setback, but must be located in areas where they will not interfere with traffic visibility.
- (2) *Single or multiple occupancy business sign.* The total sign area may not exceed 15 percent of the total front building facade. In calculating building facade, both front and side facades may be counted on a corner lot. Signs chosen to comprise the total sign area shall be consistent with the following provisions:
 - a. *Freestanding.* Not more than one sign. Sign area may not exceed a maximum height of 25 feet, except that in the B-5, Central Business District, freestanding signs shall comply with the regulations of subsection (1) of this section.
 - b. *Wall, canopy or marquee.* Wall signs shall be allowed in any number, provided that no such sign faces abutting residentially zoned property and total sign area continues to comply with the requirements of this section.

(Code 1985, § 13.07(4))

Sec. 34-77. BC, I-1, I-2 and I-4 districts.

In BC, I-1, I-2 and I-4 districts, the following signs are allowed subject to the stated conditions:

- (1) *Area identification.* Only one sign. Sign area may not exceed 100 square feet with a maximum height of ten feet for freestanding signs.
- (2) *Single or double occupancy business sign.* The total sign area may not exceed 15 percent of the front building facade except that both front and side facades may be counted on a corner lot. Signs chosen to comprise the total sign area shall be consistent with the following provisions:

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- a. *Freestanding.* Not more than one sign. Sign area may not exceed 100 square feet with a maximum height of ten feet.
 - b. *Wall, canopy or marquee.* Wall signs shall be allowed in any number, provided that no such sign faces abutting residentially zoned property and total sign area continues to comply with the requirements of this section.

(Code 1985, § 13.07(5))

Sec. 34-78. Planned unit development district.

In a planned unit development district, signing restrictions shall be based upon the individual uses and structures contained in the complex. Signs shall be in compliance with the restrictions applied in the most restrictive zoning district in which the use is allowed. Commercial projects may be allowed to replace a permitted freestanding sign with one addition wall sign, provided that the allowance does not increase the total number or square footage of signs permitted on the property under the applicable regulations, and that no more than one wall sign is erected on any wall.

(Code 1985, § 13.07(6))

Secs. 34-79—34-99. Reserved.

DIVISION 3. OTHER RESTRICTIONS

Sec. 34-100. Motor fuel stations.

Signs for motor fuel stations shall be regulated by the single occupancy business structure sign provisions for the zoning district in which the station is located. In addition, motor fuel stations may also display signs which identify current fuel prices and car wash facilities. Such signs shall be limited to a maximum size of 16 square feet each.

(Code 1985, § 13.08(1))

Sec. 34-101. Wall, canopy or marquee signs in commercial and industrial zoning districts.

Where freestanding signs are not used and where principal structures have a front yard setback in excess of that which is required under the applicable zoning district regulations, the maximum property signage percentage limitation or maximum square feet restriction may be increased one percent for every five feet of additional setback beyond the zoning district front yard setback requirement. This increase shall be limited to a 25 percent maximum and shall be applied only to signs located in the yard for which the calculation was made.

(Code 1985, § 13.08(2))

Sec. 34-102. Signs in multiple occupancy business and industrial buildings.

- (a) When a single principal building is devoted to four or more businesses, or industrial uses, a comprehensive sign plan for the entire structure shall be submitted and shall be of sufficient scope and detail to permit a determination as to whether or not the plan is consistent with the following regulations. The plan shall be

subject to the approval of the council. No permit shall be issued for an individual use except upon a determination that it is consistent with the approved comprehensive sign plan.

- (b) The maximum individual sign sizes for multiple occupancy structures and individual uses which may display signs shall not exceed the maximum provisions for single or double occupancy structures in the same zoning district. The bonus provided in section 34-101 may display an area identification sign consistent with the applicable district provisions of division 2 of this article. Individual freestanding signs identifying the tenants' business shall not be displayed.
- (c) Except as provided in subsection (d) of this section, individual tenants of multiple occupancy structures shall not display separate business signs unless the tenants' business has an exclusive exterior entrance. The number of signs shall be limited to one per entrance, and each sign shall be limited to the maximum wall size sign permitted in the district. The signs shall be located only on exterior walls which are directly related to the use being identified.
- (d) In any multiple occupancy structure qualifying as a shopping center, directory signs shall be permitted for each common public entrance. Each directory sign area shall not exceed a total of 50 square feet and shall be located within 50 feet of the common public entrance being served. The size of individual business identification signing within the directory shall be established during the site plan review process. Attention shall be given to the possible number of tenant or occupancy bays which may be served by the common public entrance for which the directory sign is intended.

(Code 1985, § 13.08(3))

Sec. 34-103. Shopping centers, retail developments, and industrial parks.

- (a) When shopping centers, retail developments, or industrial parks cover more than ten acres and contain more than 50,000 gross square feet of floor area, the city may approve a number of freestanding signs equal to one sign per street frontage, with a maximum height of 30 feet.
- (b) All signs shall be displayed in accordance with the maximum sign size provisions of the applicable zoning district. In the alternative, the city may approve a comprehensive sign plan by conditional use permit, in accordance with the provisions for conditional use permits. The comprehensive sign plan shall allow the city to consider additional or larger signs consistent with the size and use of the project.

(Code 1985, § 13.08(4))

Sec. 34-104. Highway area directional signs.

Within the area immediately adjacent to U.S. Highway 55 and trunk Highway 25, directional signs indicating business identification and access routing signs may be allowed by approval of the council. Such signs shall be in compliance with the maximum sign size provisions of the district.

(Code 1985, § 13.08(5))

Sec. 34-105. Institutional and civic organizations.

- (a) For such facilities occupying an area of five acres or more, an identification sign not larger than 96 square feet may be permitted upon approval of a permit by the council.
- (b) Temporary signs, banners and displays for institutional or civic events are permitted but must be located on property owned or controlled by the institution, or civic organization and may be displayed only during a

period commencing 60 days prior to the scheduled event and ending three days after closing date of the scheduled event.

(Code 1985, § 13.08(6))

Sec. 34-106. Projecting signs.

Projecting signs, including those projecting into the public right-of-way, may be allowed by a permit approved by the council in the B-5 zoning district, provided that the sign conforms to the uniform character and design guidelines established for the area, the owner assumes all liability for such signs, and the signs conform to the size and height limitations of the respective district.

(Code 1985, § 13.08(7))

Chapter 36 SOLID WASTE²⁹

ARTICLE I. IN GENERAL

Sec. 36-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commercial establishment means any premises where a commercial or industrial enterprise of any kind is carried on, and includes restaurants, clubs, churches, and schools where food is prepared or served.

Multiple dwelling means any building used for residential purposes consisting of more than four dwelling units with individual kitchen facilities for each.

Refuse includes all organic material resulting from the manufacture, preparation or serving of food or food products, and spoiled, decayed or waste foods from any source, bottles, cans, glassware, paper or paper products, crockery, ashes, rags, and discarded clothes, tree or lawn clippings, leaves, weeds and other waste products, except human waste or waste resulting from building construction or demolition.

Residential dwelling means any single building consisting of one through four dwelling units with individual kitchen facilities for each.

(Code 1985, §§ 3.20(1), 10.01(1))

Sec. 36-2. Transporting of refuse restricted.

- (a) It is unlawful for any person to transport refuse over any street, for hire, except by special permit from the council, or acting within the course and scope of a written contract with the city, or his employment with the city.

²⁹State law reference(s)—Waste Management Act, M.S.A. § 115A.01 et seq.; solid waste recycling, M.S.A. § 116F.01 et seq.; solid waste management projects, M.S.A. § 115A.49 et seq.; organized collection, M.S.A. § 115A.94; separation of mixed municipal wastes, M.S.A. § 473.811.

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- (b) It is unlawful for any person to transport refuse on any street unless it is carried in a vehicle equipped with a leak-proof body or container and completely covered with a heavy canvas or top to prevent loss of contents.

(Code 1985, § 3.20(2))

Sec. 36-3. City compost facility.

- (a) Only city residents or businesses shall deposit materials at the city's compost facility.
- (b) Deposited materials must be organic yard materials (lawn clippings, twigs, and branches, sawdust, wood ash, leaves, weeds); garden wastes (faded flowers, weeds, plant trimmings); lake plants; spare kitchen scraps (fruit and vegetables, peels, trimmings, and other raw non-greasy food waste). Other materials which can be disposed of in a safe, sanitary, and biodegradable manner may be deposited with the approval of an on-site staff member.
- (c) Logs, plastics, synthetic fibers, human or pet wastes, heavily diseased plants, meat, bones, fat, oils, dairy products, chemical barrels, refrigerators, ovens, steel and various other metals, construction lumber and hazardous wastes are prohibited.
- (d) All deposited materials must be placed with like materials in designated areas at the compost facility. Bags and containers used to transport the compost may not be left at the compost facility.
- (e) Compost facility hours will be posted near the driveway of the facility. No access is allowed after hours.
- (f) Designated city staff will be responsible for enforcement procedures.
- (g) Failure to comply with the provisions of this section shall result in a monetary penalty in accordance with the city's penalty schedule.

(Code 1985, § 3.20(7))

Secs. 36-4—36-24. Reserved.

ARTICLE II. COLLECTION AND DISPOSAL

Sec. 36-25. City to provide services.

The city shall provide for collection and disposal of all refuse in a sanitary manner to ensure the health, safety and general welfare of its residents, under such terms and conditions as the city may, from time to time, deem appropriate.

(Code 1985, § 3.20(4))

Sec. 36-26. Type of storage containers to be used.

All refuse shall be stored in clean, rust-resistant, water-tight, non-absorbent and washable closed containers, approved for the purpose by the city; provided, however, that tree clippings may be stored in tied bundles no longer than four feet and lawn clippings and paper may be stored in containers protected from wind and other elements.

(Code 1985, § 3.20(3))

Sec. 36-27. Placement of containers for collection.

Containers shall be placed at the designated collection point on days specified by the city. Collection points will generally be the alley adjacent to the property from which refuse is collected; but where there is no alley, the curblin in front of such property.

(Code 1985, § 3.20(4))

Sec. 36-28. Materials at disposal sites constitute city property.

All materials at public disposal sites are the property of the city. It is unlawful for any person to separate, collect, carry off or dispose of such materials except by direction of the city.

(Code 1985, § 3.20(5))

Sec. 36-29. Disposal of private wastes at city disposal sites.

Privately hauled non-refuse disposal from households, and refuse and non-refuse disposal from commercial establishments, may be deposited at the disposal site upon payment of charges therefor.

(Code 1985, § 3.20(6))

Chapter 38 STREETS, SIDEWALKS AND RIGHTS-OF-WAY³⁰

ARTICLE I. IN GENERAL

Sec. 38-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bicycle means every device propelled solely by human power upon which any person may ride, having two tandem wheels, except scooters and similar devices and including any device generally recognized as a bicycle though equipped with two front and rear wheels.

Roller blades and *roller skates* mean a boot or shoe having wheels attached which enable the wearer to propel himself with a skating motion. The term "roller blades" or "roller skates" shall specifically include, but is not limited to, inline roller skates, and roller skis.

Sidewalk means that portion of a street between the curblines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

Skateboard means a rider propelled footboard mounted over small wheels upon which a rider may sit or stand.

³⁰State law reference(s)—Vacation of streets, M.S.A. §§ 412.851, 440.13; municipal authority regarding streets and other public ways, M.S.A. §§ 412.221, 429.021; street and road improvements outside municipal boundaries, M.S.A. § 429.052.

(Code 1985, § 10.54(2)(A)—(D))

Sec. 38-2. Private repair and improvement of city roadway surfaces, sidewalks, curbs and gutters.

- (a) *Authority for improvements; advance payment required.* Abutting or affected property owners may contract for, construct or reconstruct roadway surfacing, sidewalk or curb and gutter in accordance with this section if advance payment is made therefor or arrangements for payment considered adequate by the city are completed in advance. Such improvements may be made with or without petition under M.S.A. ch. 429 (local improvements).
- (b) *Permit required; procedure.* It is a misdemeanor to construct or reconstruct a sidewalk, curb and gutter, driveway, or roadway surfacing in any street or other public property in the city without a permit in writing from the city; provided, however, that no permit shall be required for any such improvement ordered installed by the council. Permits may be acquired in accordance with the following:
 - (1) Application for permit shall be made on forms approved and provided by the city and shall sufficiently describe the contemplated improvements, the contemplated date of beginning of work, and the length of time required to complete the same.
 - (2) Applications shall be referred by the city to the administrator and no permit shall be issued until approval has been received from the administrator.
 - (3) Applications shall contain an agreement by the applicant to be bound by this chapter and plans and specifications consistent with the provisions of this article and good engineering.
 - (4) A permit from the city shall not relieve the holder from damages to the person or property of another caused by such work.
- (c) *Standards and specifications.* All construction and reconstruction of roadway surfacing, sidewalk and curb and gutter improvements, including curb cuts, shall be strictly in accordance with specifications and standards on file in the office of the administrator and open to inspection and copying there. Such specifications and standards may be amended from time to time by the city but shall be uniformly enforced.
- (d) *Inspection; correction of defects.* The administrator shall inspect such improvements as deemed necessary or advisable. Any work not done according to the applicable specifications and standards shall be removed and corrected at the expense of the permit holder.
- (e) *Stop work orders.* Any work done hereunder may be stopped by the administrator if found to be unsatisfactory or not in accordance with the specifications and standards, but this shall not place a continuing burden upon the city to inspect or supervise such work.

(Code 1985, § 7.06)

Sec. 38-3. Use of personal recreational devices on public ways and in public areas.

- (a) *Purpose.* The purpose of this section is to protect the public health and safety arising out of the use of skateboards, roller skates, roller blades, roller skis, or other recreational devices within the city.
- (b) *Pulling by vehicle or bicycle prohibited.* It is unlawful for any person to ride or propel himself to ride upon a skateboard, roller skates, roller blades, roller skis, or other recreational device in any area within the jurisdictional limits of the city while being pushed, pulled or in any way propelled by any motorized vehicle or by any person or bicycle.

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- (c) *Using perpendicular to normal traffic flow.* It is unlawful for any person to ride or propel himself to ride or propel himself upon a skateboard, roller skates, roller blades, roller skis, or other recreational device on any public street, roadway or highway in a direction which is perpendicular to the normal direction of roadway or highway traffic except for the purpose of traversing the same at an intersection or designated crosswalk.
- (d) *Use prohibited in certain areas.* It is unlawful for any person to ride or propel himself to ride a bicycle, skate, or ride a skateboard in the following restricted areas:
- (1) Sturges Park band shell, inclusive of all areas on or within 15 feet of the Band Shell.
 - (2) Water treatment plant, inclusive of all areas inside the perimeter sidewalk.
 - (3) Tennis courts, inclusive of all areas inside the fenced area of the tennis courts.
 - (4) Veterans Memorial Park, inclusive of all areas inside of the curbline adjacent the Veterans Memorial Park.
 - (5) Electric substation, inclusive of all areas inside the perimeter sidewalk.
 - (6) B-5 Central Business District as described in city zoning regulations except on a public parking lot in such district between the hours of 8:00 p.m. and 10:30 p.m. or upon prior approval of the city for special events.
- (e) *Bicycle traffic rules applicable.* Any person who engages in the use of skateboards, roller skates, roller blades, roller skis, or other recreational device on streets within the city must observe the same rules of the road as required of bicycles pursuant to M.S.A. § 169.222.
- (f) *Violations and penalties.* Any person who violates this section shall be guilty of a petty misdemeanor, unless the violation results in injury to any person or property or created an imminent danger of injury to any person, in which case the violation shall be a misdemeanor punishable by a fine of up to \$700.00 and 90 days in jail or both.
- (g) *Seizure of device.* Any peace officer who observes a person violating this section is authorized to seize the offender's skateboard, roller skates, roller skis, or other recreational devices and hold such item at the city police department. The offender, if an adult, may secure the return of the article seized after 24 hours have elapsed since the seizure. If the offender is a minor, the article seized shall be returned only to the parent or guardian of such minor offender after 24 hours have elapsed since seizure.
- (Code 1985, § 10.54(1), (2)(E)–(5))

Sec. 38-4. Pavement opening or excavation permits.

- (a) *Required.* It is a misdemeanor for any person, except a city employee acting within the course and scope of his employment or a contractor acting within the course and scope of a contract with the city, to make any excavation, opening or tunnel in, over, across or upon a street, sidewalk, curb, gutter or other public property without first having obtained a written permit from the city as provided in this section.
- (b) *Application.* Application for a permit to make a street, curb, gutter or other pavement excavation shall describe with reasonable particularity the name and address of the applicant, the place, purpose and size of the excavation, and such other information as may be necessary or desirable to facilitate the investigation required under this section and shall be filed with the city.
- (c) *Investigation; estimate of costs.* Upon receipt of an application, the administrator shall cause such investigation to be made as he may deem necessary to determine estimated cost of repair, such as back-filling, compacting, resurfacing and replacement, and the conditions as to the time of commencement of work, manner of procedure and time limitation upon such excavation. The foregoing estimated costs shall

include permanent and temporary repairs due to weather or other conditions, and the cost of such investigation shall be included in such estimate.

- (d) *Non-completion or abandonment.* Work shall progress expeditiously to completion in accordance with any time limitation placed thereon so as to avoid unnecessary inconvenience to the public. If work is not so performed or ceases or is abandoned without due cause, the city may, after six hours' notice in writing to the holder of the permit, correct the work, fill the excavation and repair the public property. The cost thereof shall be paid by the person holding the permit.
- (e) *Insurance.* Prior to commencement of the work described in the application, the applicant shall furnish the city satisfactory evidence in writing that the applicant will keep in effect public liability insurance of not less than \$100,000.00 for any person, \$300,000.00 for any occurrence and property damage insurance of not less than \$25,000.00, issued by an insurance company authorized to do business in the state on which the city is named as a co-insured.
- (f) *Indemnification.* Before issuance of a permit, the applicant shall, in writing, agree to indemnify and hold the city harmless from any liability for injury or damage arising out of the action of the applicant in performance of the work, or any expense whatsoever incurred by the city incident to a claim or action brought or commenced by any person arising therefrom.
- (g) *Permit issuance.* The administrator shall issue such permit after completion of such investigation, determination of estimated costs, agreement by the applicant to the conditions of time and manner; agreement in writing by the applicant to pay actual cost of repairs over the estimate, and agreement in writing by the applicant to be bound by all provisions of this section. No permit shall be issued until the applicant has paid the foregoing together with such investigation, inspection and permit fees as are fixed and determined by resolution of the council.
- (h) *Standards; costs.* All temporary and permanent repairs, including back-filling, compacting and resurfacing shall be made, or contracted for, by the city in a manner prescribed by the city and an accurate account of costs thereof shall be kept.
- (i) *Cost adjustment.* Within 60 days following completion of such permanent repairs, the administrator shall determine actual costs of repairs, including cost of investigation, and prepare and furnish to such permit holder an itemized statement thereof and claim additional payment from, or make refund (without interest) to, the permit holder as appropriate.
- (j) *Alternate cost method.* In lieu of the provisions of subsection (i) of this section, relating to cost and cost adjustment for street openings, the city may charge on the basis of surface square feet removed, excavated cubic feet, or a combination of surface square feet and excavated cubic feet, on an established unit price uniformly charged.

(Code 1985, § 7.08)

Sec. 38-5. Obstruction of public ways.

- (a) *Obstruction prohibited; permit required.* It is a misdemeanor for any person to place, deposit, display or offer for sale, any fence, goods or other obstructions upon, over, across or under any street without first having obtained a written permit from the council, and then only in compliance in all respects with the terms and conditions of such permit, and taking precautionary measures for the protection of the public. Prohibited obstructions include an electrical cord or other device crossing a public way.
- (b) *Signs and other structures.* It is a misdemeanor for any person to place or maintain a sign, advertisement, or other structure in any street without first having obtained a written permit from the council. In a district zoned for commercial or industrial enterprises special permission allowing an applicant to erect and maintain

signs overhanging the street may be granted upon such terms and conditions as may be set forth in the zoning or construction provisions of this Code.

- (c) *Insurance and bond may be required for permit issuance.* Before granting any permit under any of the provisions of this section, the council may impose such insurance or bonding conditions thereon as it, considering the projected danger to public or private property or to persons, deems proper for safeguarding such persons and property. Such insurance or bond shall also protect the city from any suit, action or cause of action arising by reason of such obstruction.
- (d) *Continuing violation.* Each day that any person continues in violation of this section shall be a separate offense and punishable as such.

(Code 1985, § 7.07(1), (4), (6), (7))

Sec. 38-6. Fires and dumping on streets prohibited.

- (a) *Fires upon streets prohibited.* It is a misdemeanor for any person to build or maintain a fire upon a street.
- (b) *Dumping in streets prohibited.* It is a misdemeanor for any person to throw or deposit in any street any nails, dirt, glass or glassware, cans, discarded cloth or clothing, metal scraps, garbage, leaves, grass or tree limbs, paper or paper products, shreds or rubbish, oil, grease or other petroleum products, or to empty any water containing salt or other injurious chemical thereon.
 - (1) It is a violation of this subsection to haul any such material, inadequately enclosed or covered, thereby permitting the same to fall upon streets.
 - (2) It is also a violation of this subsection to place or store any building materials or waste resulting from building construction or demolition on any street without first having obtained a written permit from the council.
- (c) *Continuing violation.* Each day that any person continues in violation of this section shall be a separate offense and punishable as such.

(Code 1985, § 7.07(2), (3), (6))

Sec. 38-7. Ice and snow on public streets and sidewalks.

- (a) *Depositing prohibited; exception.* It is a misdemeanor for any person, not acting under a specific contract with the city or without special permission from the city, to remove snow or ice from private property and place the same in any roadway or on a sidewalk. When permission is granted by the city the person to whom such permission is granted shall be initially responsible for payment of all direct or indirect costs of removing the snow or ice from the street or sidewalk. If not paid, collection shall be by civil action or assessment against the benefitted property as any other special assessment.
- (b) *Accumulation prohibited and declared nuisance; property owner or tenant to abate.* Snow and ice remaining upon public sidewalks 12 hours after snow or ice has ceased to be deposited is declared to constitute a public nuisance which must be abated by the owner or tenant of the abutting private property.
- (c) *Abatement by city; record of costs.* Beginning 12 hours after snow or ice has ceased to fall, accumulated snow or ice on public sidewalks may be removed by the city. The cost of removal by the city and the private property adjacent to the removed accumulations shall be provided to the city administrator.
- (d) *Assessment of costs against benefitted properties.* The administrator shall, upon direction of the council, extend the cost of removal of snow or ice as a special assessment against the lots or parcel of ground

abutting on walks which were cleared, and such special assessments shall be certified to the county auditor for collection.

- (e) *Civil suit for cost recovery.* Alternatively, and upon direction of the council, the city administrator may bring suit against the benefitted property owners in a court of competent jurisdiction to recover the cost of such clearing and the cost of the civil action for recovery.
- (f) *Administrator to report; council to determine collection method.* The administrator shall present to the council at its first meeting after snow or ice has been cleared from the sidewalks under this section and shall request the council to determine by resolution the manner of collection to be used.
- (g) *Continuing violations.* Each day that any person continues in violation of this section shall be a separate offense and punishable as such.

(Code 1985, §§ 7.05, 7.07(5))

Sec. 38-8. Duty of abutting property owner to repair and maintain sidewalks.

It is the primary responsibility of the owner of property upon which there is abutting any sidewalk to keep and maintain such sidewalk in safe and serviceable condition. All construction, reconstruction or repair of sidewalks shall be done in strict accordance with specifications on file in the office of the administrator.

(Code 1985, § 7.10(1), (2))

Sec. 38-9. Public trees and other landscaping.

- (a) The city shall have control and supervision of planting shrubs and trees upon, or overhanging, all the streets or other public property. The city may establish and enforce uniform standards relating to the kinds and types of trees to be planted and the placement thereof. Such standards shall be kept on file in the office of the administrator and may be revised from time to time by action of the council upon the recommendation of the administrator.
- (b) It is a misdemeanor for any person to plant, spray, trim or remove trees or other plants which are upon city property, including rights-of-way, without first procuring from the city a permit in writing to do so.

(Code 1985, § 7.09(1), (2))

Secs. 38-10—38-36. Reserved.

ARTICLE II. RIGHT-OF-WAY MANAGEMENT

DIVISION 1. GENERALLY

Sec. 38-37. Findings, purpose, and intent.

- (a) The city has enacted this article to provide for the health, safety and welfare of its citizens and to ensure the integrity of its streets and the appropriate use of the rights-of-way, as the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

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- (b) This article imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies.
 - (c) Under this article, persons excavating or obstructing the rights-of-way will bear financial responsibility for their work. In addition, this article provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

(Code 1985, § 15.01)

Sec. 38-38. Interpretation; applicable state law.

This article shall be interpreted consistently with state statutes governing applicable rights of the city and users of the right-of-way and with Minn. R. ch. 7819 regarding public rights-of-way standards. To the extent any provision of this article cannot be interpreted consistently with the state rules, the interpretation most consistent with state statutory and case law is intended.

(Code 1985, § 15.01)

Sec. 38-39. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned facility means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service. A facility is not considered abandoned unless declared so by the right-of-way user.

Applicant means any person requesting permission to excavate or obstruct a right-of-way.

Commission means the state public utilities commission.

Construction performance bond means any of the following forms of security provided at permittee's option:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Security of a form listed or approved under M.S.A. § 15.73(3);
- (4) Letter of credit in a form acceptable to the city;
- (5) Self-insurance in a form acceptable to the city;
- (6) A blanket bond for projects within the city; or
- (7) Other form of construction bond for a time specified, and in a form acceptable to the city.

Degradation means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

Degradation cost, subject to Minn. R. 7819.1100, means the cost to achieve a level of restoration as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates one to 13 contained in Minn. R. 7819.9900 through 7819.9950.

Degradation fee means the estimated cost established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

Delay penalty means the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

Department means the city utilities department.

Director means the city utilities department director.

Emergency means a condition that poses a danger to life or health, or of a significant loss of property or requires immediate repair or replacement of facilities in order to restore service to a customer.

Equipment means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

Excavate means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Excavation permit means the permit which, pursuant to this article, must be obtained before a person may excavate in a right-of-way. An excavation permit allows the holder to excavate only that part of the right-of-way described in such permit.

Facility or facilities means any tangible asset in the right-of-way required to provide utility service.

Hole means an excavation in the pavement, with the excavation having a length less than the width of the pavement.

Horizontal directional drill (HDD) means an underground horizontal drilling bore at various depths composed of a divergent class of materials and diameters.

Inspector means any person authorized by the city to carry out inspections related to the provisions of this article.

Local representative means a local person, or designee of such person, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this article.

Management costs.

- (1) The term "management costs" means the actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, associated with:
 - a. Registering applicants;
 - b. Issuing, processing, and verifying right-of-way permit applications;
 - c. Inspecting job sites and restoration projects;
 - d. Maintaining, supporting, protecting, or moving user facilities during right-of-way work;
 - e. Determining the adequacy of right-of-way restoration;
 - f. Restoring work inadequately performed after providing notice and the opportunity to correct the work; and
 - g. Revoking right-of-way permits.
- (2) The term "management costs" does not include payment by a telecommunications right-of-way user for the use of the right-of-way, the cost of litigation relating to the interpretation of this article or the state statutes and rules from which it is derived, or city costs related to appeals taken pursuant to this article.

Obstruct means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

Obstruction permit means the permit which, pursuant to this article, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

Patch or patching means a method of pavement replacement that is temporary in nature. A patch consists of the compaction of the subbase and aggregate base and the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's five-year project plan.

Pavement means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

Permittee means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this article.

Probation means the status of a person that has not complied with the conditions of this article.

Probationary period means one year from the date that a person has been notified in writing that they have been put on probation.

Project plan means a plan adopted by the city for future construction projects. A two-year project plan shows projects adopted by the city for construction within the next two years. A five-year project plan shows projects adopted by the city for construction within the next five years.

Public right-of-way means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right-of-way does not include the airwaves above a right-of-way with regard to cellular or other non-wire telecommunications or broadcast service.

Registrant means any person who has or seeks to have its equipment or facilities located in any right-of-way or in any way occupies or uses, or seeks to occupy or use, the right-of-way or place its facilities or equipment in the right-of-way.

Restore or restoration means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

Restoration cost means the amount of money paid to the city by a permittee to achieve the level of restoration according to plates one to 13 contained in Minn. R. 7819.9900 through 7819.9950.

Right-of-way permit or permit means either the excavation permit or the obstruction permit, or both, depending on the context, required by this article.

Right-of-way user means a person owning or controlling a facility in the right-of-way that is used or intended to be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

Supplementary application means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

Temporary surface means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. Such surface is temporary in nature except when the replacement is of pavement included in the city's two-year plan, in which case it is considered full restoration.

Trench means an excavation in the pavement, with the excavation having a length equal to or greater than the width of the pavement.

(Code 1985, § 15.03)

Sec. 38-40. Administration.

The city administrator is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The director may delegate part or all of his duties hereunder.

(Code 1985, § 15.04)

Sec. 38-41. City elects to manage public rights-of-way.

Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city elects pursuant M.S.A. § 237.163(2b) to manage rights-of-way within its jurisdiction.

(Code 1985, § 15.02)

Sec. 38-42. Mapping data information required.

Each registrant and permittee under this article shall provide mapping information required by the city in accordance with Minn. R. 7819.4000 and 7819.4100.

(Code 1985, § 15.21)

Sec. 38-43. Location and relocation of facilities.

- (a) *Compliance with state administrative rules required.* Placement, location, and relocation of facilities must comply, with other applicable law, and with Minn. R. 7819.3100, 7819.5000 and 7819.5100, to the extent the rules do not limit authority otherwise available to cities.
- (b) *City may designate corridors.* The city may assign specific areas within the right-of-way, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.
- (c) *Moving nonconforming facilities; exceptions.* Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.
- (d) *Non-registered facilities deemed nuisance.* Facilities found in a right-of-way that have not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.
- (e) *Limitation of placement of new or additional facilities.* To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the city shall

strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by:

- (1) Considerations of the public interest, the public's needs for the particular facility;
 - (2) The condition of the right-of-way;
 - (3) The time of year with respect to essential utilities;
 - (4) The protection of existing facilities in the right-of-way; and
 - (5) Future city plans for public improvements and development projects which have been determined to be in the public interest.
- (f) *Determining location of facilities.* In addition to complying with the requirements of M.S.A. ch. 216D (excavation notice system) before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal placement of all the facilities. Any registrant whose facilities are less than 20 inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its facilities and the best procedure for excavation.

(Code 1985, § 15.22)

Sec. 38-44. Damage to other facilities.

- (a) Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that registrant's facilities.
- (b) When the city does work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect the facility, the city shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing.
- (c) In the process of completing work in accordance with the issued permit, if a permittee or designee damages an existing installed utility, permittee shall notify the owner and utilities director immediately.

(Code 1985, § 15.23)

Sec. 38-45. Indemnification and liability.

By registering with the city, or by accepting a permit under this article, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minn. R. 7819.1250.

(Code 1985, § 15.25)

Sec. 38-46. Right-of-way vacation.

If the city vacates a right-of-way which contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minn. R. 7819.3200.

(Code 1985, § 15.24)

Sec. 38-47. Abandoned and unusable facilities.

- (a) *Discontinued operations.* A registrant who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the registrant's obligations for its facilities in the right-of-way under this article have been lawfully assumed by another registrant.
- (b) *Removal.* Any registrant who has abandoned facilities in any right-of-way shall remove those facilities from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

(Code 1985, § 15.26)

Sec. 38-48. Appeal.

A right-of-way user that has been denied registration, has been denied a permit, has had a permit revoked, or believes that the fees imposed are invalid may have the denial, revocation, or fee imposition reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

(Code 1985, § 15.27)

Sec. 38-49. Reservation of regulatory and police powers.

A permittee's or registrant's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances as necessary to protect the health, safety and welfare of the public.

(Code 1985, § 15.28)

Sec. 38-50. Violation constitutes misdemeanor.

Violation of this article shall, upon conviction, be punished as misdemeanors unless otherwise specifically provided in this article.

(Code 1985, § 15.99)

Secs. 38-51—38-73. Reserved.

DIVISION 2. REGISTRATION AND REPORTING

Sec. 38-74. Right-of-way occupancy registration.

- (a) *Required.* Each person who occupies, uses, or seeks to occupy or use, the right-of-way or place any equipment or facilities in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city. Registration will consist of providing application information and paying a registration fee.

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- (b) *No work to commence before registration.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the city.
- (c) *Exception for boulevard plantings and gardens.* This section shall not repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this article. However, this subsection does not relieve a person from complying with the provisions of the M.S.A. ch. 216D (excavation notice system).

(Code 1985, § 15.05)

Sec. 38-75. Registration application content.

- (a) *Information required.* The information provided to the city at the time of registration shall include, but not be limited to:
- (1) *Registrant identification and contact information.* Each registrant's name, Gopher One-Call registration certificate number, address and email address if applicable, and telephone and facsimile numbers.
 - (2) *Local representative identification and contact information.* The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
 - (3) *Insurance documentation.* A certificate of insurance or self-insurance:
 - a. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the state or a form of self-insurance acceptable to the city;
 - b. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees and placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;
 - c. Naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
 - d. Requiring that the city be notified 30 days in advance of cancellation of the policy or material modification of a coverage term;
 - e. Indicating comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this article;
 - f. The city may require a copy of the actual insurance policies.
 - (4) *Certificate of incorporation.* If the person is a corporation, a copy of the certificate of incorporation as recorded and certified by the secretary of state.
 - (5) *Order granting certificate of authority.* A copy of the order granting a certificate of authority from the state public utilities commission or other applicable state or federal agency, when the person is lawfully required to have such certificate from the commission or other state or federal agency or a

statement clarifying the person's legal right and authority to locate in and use the right-of-way and the manner of use authorized.

- (b) *Notice of changes.* The registrant shall keep all of the information listed in subsection (a) of this section current at all times by providing to the city information as to changes within 15 days following the date on which the registrant has knowledge of any change.

(Code 1985, § 15.06)

Sec. 38-76. Construction and major maintenance plan.

- (a) *Required annually.* Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan for underground facilities with the city. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.
- (b) *Changes to plan.* Thereafter, by April 1, each registrant may change any project in its list of next-year projects and must notify the city and all other registrants of all such changes in the list. Notwithstanding the foregoing, a registrant may at any time join in a next-year project of another registrant listed by the other registrant.
- (c) *Effect of failure to include project in plan.* Notwithstanding the foregoing, the city will not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the city if the registrant has used commercially reasonable efforts to anticipate and plan for the project.
- (d) *Plan contents.* The plan shall include, but not be limited to, the locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year ("next-year projects") and, to the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year ("five-year projects").
- (e) *Both next-year and five-year projects included.* The term "project," used in this section, includes both next-year projects and five-year projects.
- (f) *Annual composite list of projects.* By March 1 of each year, the city will have available for inspection in the city's office a composite list of all projects of which the city has been informed of the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.

(Code 1985, § 15.07)

Secs. 38-77—38-95. Reserved.

DIVISION 3. PERMITS

Sec. 38-96. Types of permits; extensions; display; delay penalties.

- (a) *Permit required.* Except as otherwise provided in this Code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the city to do so.
- (b) *Excavation permit.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

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- (c) *Obstruction permit.* An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.
 - (d) *Extensions.* No person may excavate or obstruct the right-of-way beyond the date specified in the permit unless such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit and a new permit or permit extension is granted.
 - (e) *Delay penalty.* In accordance with Minn. R. 7819.1000(3), and notwithstanding the extension provisions of this section, the city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by city council resolution.
 - (f) *Display.* Permits issued under this article shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

(Code 1985, § 15.08)

Sec. 38-97. Application requirements and prerequisites.

Right-of-way related permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- (1) Registration with the city pursuant to this article.
- (2) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
- (3) Payment of money due the city for:
 - a. Permit fees, estimated restoration costs and other management costs.
 - b. Prior obstructions or excavations.
 - c. Any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city.
 - d. Franchise fees or other charges, if applicable.
- (4) Payment of disputed amounts due the city by posting security or depositing in an escrow account an amount equal to at least 110 percent of the amount owing.
- (5) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

(Code 1985, § 15.10)

Sec. 38-98. Joint applications.

- (a) *Authorized.* Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
- (b) *Shared fees.* Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. To obtain a joint permit,

registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

- (c) *Cost exceptions for registrants who join with scheduled city projects.* Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the excavation or obstruction and degradation portions of the permit fee, but a permit is still required.

(Code 1985, § 15.12)

Sec. 38-99. Supplementary applications.

- (a) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area make application for a permit extension and pay any additional fees required thereby and be granted a new permit or permit extension.
- (b) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.

(Code 1985, § 15.13)

Sec. 38-100. Denial of permit.

The city may deny a permit for failure to meet the requirements and conditions of this article, if:

- (1) The city determines the work necessitating the permit is otherwise unauthorized;
- (2) The city determines that the denial is necessary to protect the public health, safety, and welfare; or
- (3) When necessary to protect the right-of-way and its current use.

(Code 1985, § 15.15)

Sec. 38-101. Issuance of permit; conditions.

If the applicant has satisfied the requirements of this article, the city shall issue a permit. The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the public health, safety and welfare or when necessary to protect the right-of-way and its current use.

(Code 1985, § 15.09)

Sec. 38-102. Permit fees.

- (a) *Excavation permit fee.* The city shall establish an excavation permit fee in an amount sufficient to recover the city's management costs and degradation costs, if applicable.

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- (b) *Obstruction permit fee.* The city shall establish an obstruction permit fee in an amount sufficient to recover the city management costs.
 - (c) *Payment required before permit issuance; exception.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees; provided, however, that the city may allow and applicant to pay such fees within 30 days of billing.
 - (d) *Fees nonrefundable upon revocation for cause.* Permit fees that were paid for a permit that the city has revoked for a breach as provided in this article are not refundable.
 - (e) *Relationship to franchise fees.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user by the franchise.

(Code 1985, § 15.10)

Sec. 38-103. Inspection; stop work orders; orders for correction of violations.

- (a) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance Minn. R. 7819.1300.
- (b) *Site to be made available for inspection.* Permittee shall make the work-site available to the city and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- (c) *Stop work orders.* At the time of inspection, the director, or at his designation the city engineer, may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public.
- (d) *Order for correction of violations; revocation of permit.* The director, or at his designation the city engineer, may issue an order to the permittee for any work which does not conform to the terms of the permit or other applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, the director may revoke the permit pursuant to this article.

(Code 1985, § 15.17)

Sec. 38-104. Emergency work.

- (a) *Notice to city; performing work without permit.* Each registrant shall immediately notify the director, or at his designation the city engineer, of any event regarding its facilities which it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency.
- (b) *Application for permit after work is commenced or completed.* Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this article for the actions it took in response to the emergency.
- (c) *Action by city in the event of emergency.* If the city becomes aware of an emergency regarding a registrant's facilities, the city will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

(Code 1985, § 15.18(1))

Sec. 38-105. Nonemergency work performed without permit.

Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit or immediately remove the equipment or utilities installed, and as a penalty, pay double the normal fee for the permit, pay double all the other fees required by this Code, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this article.

(Code 1985, § 15.18(2))

Sec. 38-106. Supplementary notifications.

If an obstruction or excavation of the right-of-way begins later or ends sooner than the date given on the permit, the permittee shall notify the city of the accurate information as soon as it is known.

(Code 1985, § 15.19)

Sec. 38-107. Breach of terms and conditions; probation; permit revocation.

- (a) *Substantial breach.* The city reserves its right to revoke any right-of-way permit without a fee refund if there is a substantial breach of the terms and conditions of any applicable statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by the permittee shall include, but not be limited to, the following:
 - (1) The violation of any material provision of the right-of-way permit;
 - (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
 - (3) Any material misrepresentation of fact in the application for a right-of-way permit;
 - (4) The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
 - (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to this article.
- (b) *Notice of breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach will allow the city at its discretion to place additional or revised conditions on the permit to mitigate and remedy the breach.
- (c) *Response to notice.* Within 24 hours of receiving notification of the breach, the permittee shall provide the city with a plan acceptable to the city that will cure the breach. The permittee's failure to so contact the city, to timely submit an acceptable plan, or to reasonably implement the approved plan, shall be cause for immediate revocation of the permit.
- (d) *Cause for probation.* The permittee's failure to so contact the city, to submit an acceptable plan, or to reasonably implement the approved plan, shall automatically place the permittee on probation for one full year. In addition, the city may establish from time to time a list of conditions of the permit which, if breached, will automatically place the permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.

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- (e) *Automatic revocation.* If a permittee, while on probation, commits a breach, as outlined in subsection (d) of this section, the permittee's permit will automatically be revoked and the permittee will not be allowed further permits for one full year, except for emergency repairs.
 - (f) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

(Code 1985, § 15.20)

Sec. 38-108. Other obligations.

- (a) *Compliance with applicable law and rules.* Obtaining a right-of-way permit does not relieve the permittee of its duty to obtain all other necessary permits, licenses, franchises and authority and to pay all fees required by the city or other applicable rule, law or regulation. The permittee shall comply with all requirements of local, state and federal laws, including, without limitation, M.S.A. ch. 216D (excavation notice system). The permittee shall perform all work in conformance with all applicable codes and established rules and regulations and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.
- (b) *Work prohibited by existing conditions.* Except in an emergency and only after informing the utilities director and/or with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.
- (c) *Interference with right-of-way.* A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless otherwise specifically authorized by the permit.
- (d) *Report of damages.* In the process of completing work in accordance with the issued permit, if a permittee or designate damages an existing installed utility, permittee shall notify the owner and utilities director immediately.

(Code 1985, § 15.14)

Secs. 38-109—38-129. Reserved.

DIVISION 4. STANDARDS AND SPECIFICATIONS

Sec. 38-130. Installation requirements.

The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with Minn. R. 7819.1100 and other applicable local requirements as defined in the right-of-way corridor map, in so far as they are not inconsistent with the M.S.A. §§ 237.162 and 237.163. The right-of-way corridor map shall be filed and available for public inspection at the city utilities department.

(Code 1985, § 15.16)

Sec. 38-131. Right-of-way patching and restoration.

- (a) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under this division.
- (b) *Duty of permittee to patch; restoration at city's option.* Permittee shall patch its own work; provided, however, that the city may choose either to have the permittee restore the right-of-way or to restore the right-of-way itself.
- (c) *City restoration.* If the city restores the right-of-way, permittee shall pay the costs thereof within 30 days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within 30 days of billing, all costs associated with correcting the defective work.
- (d) *Permittee restoration.* If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond in accordance with the provisions of Minn. R. 7819.3000.
- (e) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee. However, the right-of-way user shall remain responsible for patching and the degradation fee shall not include the cost to accomplish these responsibilities.
- (f) *Standards.* The permittee shall perform patching and restoration according to the standards and with the materials specified by the city and shall comply with Minn. R. 7819.1100.
- (g) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by permittee or its agents. The permittee, upon notification from the city, shall correct all restoration work to the extent necessary, using the method required by the city. The work shall be completed within five calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under this article.
- (h) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city or fails to satisfactorily and timely complete all restoration required by the city, the city at its option may do such work. In that event the permittee shall pay to the city, within 30 days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

(Code 1985, § 15.11)

Chapter 40 SUBDIVISIONS, PLANNING AND DEVELOPMENT³¹

ARTICLE I. IN GENERAL

³¹State law reference(s)—Municipal and development M.S.A. § 462.351 et seq.; authority for municipal subdivision regulations, M.S.A. § 462.358; comprehensive plans, M.S.A. § 462.355; zoning ordinances, M.S.A. § 462.357.

Sec. 40-1. Purpose and intent.

In order to safeguard the best interests of the city and to assist the subdivider in harmonizing his interests with those of the city, this chapter is adopted so that the adherence to same will bring results beneficial to both parties. It is the purpose of this chapter to make certain regulations and requirements for the platting of land within the city pursuant to the authority contained in state law, which regulations the council deems necessary for the health, safety and general welfare of this community.

(Code 1985, § 12.01(1))

Sec. 40-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires.

Alley means a public or private right-of-way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on a street.

Applicant means the owner of land proposed to be subdivided for his representation.

Base lot means a lot meeting all the specifications within its zoning district prior to being divided into a two-family, townhouse, or quadraminium subdivision.

Block means an area of land within a subdivision that is entirely bounded by streets, or by streets and the entire boundary or boundaries of the subdivision, or a combination of the area of land with a river or lake.

Boulevard means the portion of the street right-of-way between the curbline and the property line.

Building means any structure built for the support, shelter or enclosure of persons, animals, chattels or movable property of any kind, and includes any structure.

Comprehensive plan means the group of maps, charts and texts that make up the comprehensive long-range plan of the city.

Design standards means the specifications to landowners or subdividers for the preparation of plats, both preliminary and final, indicating among other things, the optimum, minimum or maximum dimensions of such items as rights-of-way, blocks, easements and lots.

Easement means a grant by a property owner for the use of a strip of land and for the purpose of constructing and maintaining drives, utilities, including, but not limited to, wetlands, ponding areas, sanitary sewers, water mains, electric lines, telephone lines, storm sewer or storm drainageways and gas lines.

Final plat means a drawing or map of a subdivision meeting all of the requirements of the city and in such form as required by county for the purpose of recording.

Individual sewage disposal system means a septic tank, seepage tile sewage disposal system, or any other approved sewage treatment device.

Lot means land occupied or to be occupied by a building and its accessory buildings together with such open spaces as are required under the provisions of the current zoning regulations, having not less than the minimum area required by the zoning regulations for a building site in the district in which such lot is situated and having its principal frontage on a street.

Lot, corner, means a lot situated at the intersection of two streets, the interior angle of such intersection not exceeding 135 degrees.

Lot improvement means any building, structure, place, work of art, or other object, or improvement of the land on which they are situated constituting a physical betterment of real property, or any part of such betterment. Certain lot improvements shall be properly bonded as provided in these regulations.

Outlot means a lot remnant or parcel of land left over after platting, which is intended as open space or other use, for which no building permit shall be issued.

Parks and playgrounds means public land and open spaces in the city dedicated or reserved for recreation purposes.

Pedestrian way means a public right-of-way or private easement across a block or within a block to provide access for pedestrians and which may be used for the installation of utility lines.

Percentage of grade means on street centerline, means the distance vertically from the horizontal in feet and tenths of a foot for each 100 feet of horizontal distance.

Planning commission means the planning commission of the city.

Preliminary plat means a tentative drawing or map of a proposed subdivision meeting the requirements enumerated in this chapter.

Protective covenants means contracts made between private parties as to the manner in which land may be used, with the view to protecting and preserving the physical and economic integrity of any given area.

Public improvement means any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree, lawn, off-street parking area, lot improvement or other facility for which the city may ultimately assume the responsibility for maintenance and operation, or which may affect an improvement for which local government responsibility is established.

Quadraminiums means single structures which contain four subdivided dwelling units all of which have individually separate entrances from the exterior of the structure.

Setback means the distance between a building and the property line nearest thereto.

Street means a public right-of-way affording primary access by pedestrians or vehicles or both, to abutting properties, whether designated as a street, highway, thoroughfare, parkway, road, avenue or boulevard.

Street width means the shortest distance between lines of lots delineating the street right-of-way.

Streets, collector, means those streets which carry traffic from local streets to the major system of arterials and highways. Collector streets primarily provide principal access to residential neighborhoods, including, to a lesser degree direct land access.

Streets, cul-de-sac, means a local street with only one outlet and having an appropriate terminal for the safe and convenient reversal of traffic movement.

Streets, local, means those streets which are used primarily for access to abutting properties and for local traffic movement.

Streets, marginal access, means those local streets which are parallel and adjacent to thoroughfares and highways; and which provide access to abutting properties and protection from through traffic.

Streets, thoroughfares, arterial, means those streets carrying larger volumes of traffic and serving as links between various subareas of the community. Thoroughfares or arterial streets are intended to provide for collection and distribution of traffic between highways and collector streets; hence regulation of direct access to property is critical.

Subdivider means any individual, firm, association, syndicate, copartnership, corporation, trust or other legal entity having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under this chapter.

Subdivision means the separation of an area, parcel, or tract of land under single ownership into two or more parcels, tracts, lots or long-term leasehold interests where the creation of the leasehold interest necessitates the creation of streets, roads, or alleys for residential, commercial, industrial or other use or any combination thereof, except those separations:

- (1) In which all the resulting parcels, tracts, lots or interests will be 20 acres or larger in size and 500 feet in width for residential uses and five acres or larger in size for commercial and industrial uses;
- (2) Creating cemetery lots;
- (3) Resulting from court orders; or
- (4) Adjusting of a lot line by the relocation of a common boundary.

Two-family dwelling means a dwelling designed exclusively for occupancy by two families living independently of each other.

Unit lots means lots created from the subdivision of a two-family dwelling or a quadraminium having different minimum lot size requirements than the conventional base lot within the zoning district.

(Code 1985, § 12.02)

Sec. 40-3. Approval and compliance required.

- (a) *Approvals necessary for acceptance of subdivision plats.* Before any plat or subdivision of land shall be recorded or be of any validity, it shall be referred to the planning commission and approved by the council as having fulfilled the requirements of this chapter.
- (b) *Conditions for recording.* No plat or subdivision shall be entitled to be recorded in the county recorder's office or have any validity until the plat thereof has been prepared, approved, and acknowledged in the manner prescribed by this chapter.
- (c) *Certificate of survey; nonplatted subdivisions.* All certificates of survey in the city shall be presented to the planning commission in the form of a preliminary plat in accordance with the standards set forth in this chapter for preliminary plats and the planning commission shall first approve the arrangement, sizes and relationships of proposed tracts in such certificate of surveys, and tracts to be used as easements or roads should be so dedicated.
- (d) *Conveyance by metes and bounds; nonplatted subdivisions.* No division of one or more parcels in which the land conveyed is described by metes and bounds shall be made or recorded if the parcels described in the conveyance are five acres or less in area and 300 feet or less in width unless such parcel was a separate parcel of record at the effective date of the ordinance from which this chapter is derived.
- (e) *Building permits.* No building permits shall be issued by the city for the construction of any building, structure or improvement to the land or to any lot in a subdivision, as defined in section 40-2, until all requirements of this chapter have been fully complied with.

(Code 1985, §§ 12.01(2)—(4), 12.50(1))

Sec. 40-4. Conflicting standards.

If there is a difference between minimum standards or dimensions specified herein and those contained in other official regulations, resolutions or this Code provisions, the most restrictive standards shall apply.

(Code 1985, § 12.01(5))

Sec. 40-5. Distance measurements.

All measured distances expressed in feet shall be the nearest tenth of a foot.

(Code 1985, § 12.01(6))

Sec. 40-6. Unlawful acts.

- (a) *Sale of lots from unrecorded plats.* It is unlawful for any person to sell, trade, or otherwise convey any lot or parcel of land as a part of, or in conformity with any plan, plat or replat of any subdivision or area located within the jurisdiction of this chapter unless the plan, plat or replat shall have first been recorded in the office of the county recorder.
- (b) *Receiving or recording unapproved plats.* It is unlawful for any person to receive or record in any public office any plans, plats of land laid out in building lots and streets, alleys or other portions of the same intended to be dedicated to public or private use, or for the use of purchasers or owners of lots fronting on or adjacent thereto, and located within the jurisdiction of this chapter, unless the same shall bear thereon, by endorsement or otherwise, the approval of the council.
- (c) *Misrepresentations.* It is unlawful for any person owning an addition or subdivision of land within the city to represent that any improvement upon any of the street, alleys or avenues of the addition or subdivision or any sewer in the addition or subdivision has been constructed according to the plans and specifications approved by the council, or has been supervised or inspected by the city, when such improvements have not been so constructed, supervised or inspected.

(Code 1985, § 12.51)

Sec. 40-7. Violation a misdemeanor; continuing violation.

Unless otherwise stated herein, violations of this chapter constitute misdemeanors punishable as provided in section 1-11. Each month during which any person continues in violation of this chapter shall constitute a separate offense.

(Code 1985, §§ 12.52, 12.99)

Sec. 40-8. Minor subdivisions.

- (a) *Applicability.* This section shall apply to the following applications:
 - (1) A request to divide a lot where the division is to permit the adding of a parcel of land to an abutting lot.
 - (2) A request to divide a lot from a larger tract of land and thereby creating no more than two lots. To qualify, the parcel of land shall not have been part of a minor subdivision within the last five years.
 - (3) A request to divide a base lot upon which a two-family dwelling, townhouse, or a quadraminium which is a part of a recorded plat where the division is to permit individual private ownership of a single dwelling unit within such a structure and the newly created property lines will not cause any of the unit lots or the structure to be in violation of this chapter.
- (b) *Certificate of survey.* The requested minor division shall be prepared by a registered land surveyor in the form of a certificate of survey.

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- (c) *Property description and submission information.* The data and supportive information detailing the proposed subdivision shall be the same as required for a major subdivision in this chapter. Exceptions, as stipulated in writing, may be granted by the city administrator.
 - (d) *Design standards.* The minor subdivision shall conform to all design standards specified in this chapter. Any proposed deviation from the standards shall require the processing of a variance request.
 - (e) *Approval.* If the land division involves property which has been previously platted, the city administrator may approve the subdivision, provided that it complies with applicable provisions of this chapter. For applications involving property not previously platted, the formal applicable and review process shall be followed.

(Code 1985, § 12.10)

Secs. 40-9—40-34. Reserved.

ARTICLE II. APPLICATION AND REVIEW PROCEDURE

DIVISION 1. GENERALLY

Sec. 40-35. Sketch plan.

In order to ensure that all applicants are informed of the procedural requirements and minimum standards of this chapter and the requirements or limitations imposed by other plans or provisions of this Code prior to the development of a preliminary plat, all applicants shall present a sketch plan to the city administrator prior to filing a preliminary plat and shall schedule a preapplication meeting with the city administrator or their designee and other staff as appropriate. The city administrator may waive this requirement if deemed unnecessary. Following the sketch plan submission, the applicant may, at the applicant's discretion, schedule a concept subdivision review meeting with the planning commission, which shall include submission of the sketch plan and a narrative citing the relevant design considerations of the proposed subdivision, along with any departures from applicable zoning regulations that may be sought by the applicant.

(Code 1985, § 12.11(1))

Secs. 40-36—40-58. Reserved.

DIVISION 2. PRELIMINARY PLAT SUBMISSION AND REVIEW

Sec. 40-59. Filing.

- (a) Five copies of the preliminary plat shall be submitted to the city administrator. The required filing fee as provided in the city fee schedule shall be paid and any necessary applications for variances from the provisions of this division shall be submitted with the required fee. The proposed plat shall be placed on the agenda of the planning commission meeting occurring no less than 17 days from the date of submission. The plan shall be considered as being officially submitted when all the information requirements are complied with.
- (b) For plats creating two or more lots, the city shall place one or more signs on the subject property notifying the pending of use action. The city's failure to sign the property shall not invalidate proceedings on the plat.

(Code 1985, § 12.11(2)(A))

Sec. 40-60. Public hearing before planning commission.

The city clerk shall set a public hearing for public review of the subdivision. The hearing shall be held after adequate time has been allowed for staff and advisory body review of the plat. The planning commission shall conduct the hearing and report its findings and make recommendations to the council. Notice of the hearing shall consist of a legal property description, description of request and shall be published in the official newspaper at least ten day prior to the hearing. Written notification shall be mailed at least ten days prior to all owners of land within 350 feet of the boundary of the property in question.

(Code 1985, § 12.11(2)(B))

Sec. 40-61. Technical assistance reports.

The city administrator shall instruct the appropriate staff to prepare technical reports where appropriate and provide general assistance in preparing a recommendation on the action to the council.

(Code 1985, § 12.11(2)(C))

Sec. 40-62. Review by other commissions or jurisdictions.

The city administrator shall refer copies of the preliminary plat to the park and recreation committee, county, state or other public jurisdictions for their review and comment, where appropriate and when required.

(Code 1985, § 12.11(2)(D))

Sec. 40-63. Planning commission action.

The planning commission shall make a recommendation to the council following the close of the public hearing. If the planning commission has not acted upon the preliminary plat within 60 days following delivery of a subdivision application completed in compliance with this chapter, the council may act on the preliminary plat without the planning commission's recommendation.

(Code 1985, § 12.11(2)(E))

Sec. 40-64. Council action.

- (a) The council shall approve or disapprove the preliminary plat within 120 days following delivery of an application completed in compliance with this chapter unless an extension of the review period has been agreed to by the applicant and may impose conditions and restrictions which are deemed appropriate.
- (b) If the preliminary plat is not approved by the council, the reasons for such action shall be recorded in the proceedings of the council. If the preliminary plat is approved, such approval shall not constitute final acceptance of the layout. Subsequent approval will be required of the engineering proposals and other features and requirements as specified by this article to be indicated on the final plat. The council may require such revisions in the preliminary plat and final plat as it deems necessary for the health, safety, general welfare and convenience of the city based upon technical findings and needs.

(Code 1985, § 12.11(2)(F)1, 2)

Sec. 40-65. Relationship to submission of final plat.

If the preliminary plat is approved by the council, the subdivider must submit the final plat within 180 days after the approval or approval of the preliminary plat shall be considered void, unless a request for time extension is submitted in writing and approved by the council.

(Code 1985, § 12.11(2)(F)3)

Secs. 40-66—40-88. Reserved.*DIVISION 3. FINAL PLAT SUBMISSION AND REVIEW***Sec. 40-89. Filing.**

After the preliminary plat has been approved, the final plat shall be submitted for review as set forth in this chapter. The city may agree to review the preliminary and final plat simultaneously.

(Code 1985, § 12.11(3)(A))

Sec. 40-90. Review by city staff.

The city staff shall examine the final plat and prepare a recommendation to the city council. The nature of the staff's recommendations for approval, disapproval or any delay in decision of the final plat will be conveyed to the subdivider prior to city council consideration.

(Code 1985, § 12.11(3)(B))

Sec. 40-91. Approval of the council.

After review of the final plat by the city staff, such final plat, together with the recommendations of the city staff shall be submitted to the council for approval. If accepted, the final plat shall be approved by resolution, which resolution shall provide for the acceptance of all agreements for basic improvements, public dedication and other requirements as indicated by the council. If disapproved, the grounds for any refusal to approve a plat shall be set forth in the proceedings of the council and reported to the person applying for such approval.

(Code 1985, § 12.11(3)(C))

Sec. 40-92. Special assessments.

When any existing special assessments which have been levied against the property described shall be divided and allocated to the respective lots in the proposed plat, the city administrator shall estimate the clerical cost of preparing a revised assessment roll, filing the same with the county auditor, and making such division and allocation, and upon approval by the council of such cost, the same shall be paid to the city clerk before the final plat approval.

(Code 1985, § 12.11(3)(D))

Sec. 40-93. Street addresses.

With submission of the final plat, five copies of the plat map showing all addresses correctly labeled in conformance with all applicable county ordinances and policies and provisions of this Code and city policies shall be supplied to the city administrator for subsequent distribution to the utility companies and local school districts.

(Code 1985, § 12.11(3)(E))

Sec. 40-94. Recording.

If the final plat is approved by the council, the subdivider shall record it with the county recorder within 100 days after the approval or approval of the final plat shall be considered void, unless a request for time extension is submitted in writing and approved by the council. The subdivider shall, immediately upon recording, furnish the city clerk with a print and reproducible tracing of the final plat showing evidence of the recording. No building permits shall be let for construction of any structure on any lot in the plat until the city has received evidence of the plat being recorded by the county.

(Code 1985, § 12.11(3)(F))

Secs. 40-95—40-116. Reserved.***DIVISION 4. PREMATURE SUBDIVISIONS*****Sec. 40-117. Denial required.**

Any preliminary plat of a proposed subdivision deemed premature for development shall be denied by the council.

(Code 1985, § 12.11(4)(intro. ¶))

Sec. 40-118. Conditions establishing premature subdivisions.

A subdivision may be deemed premature should any of the conditions set forth in the provisions which follow exist:

- (1) *Lack of adequate drainage.* A condition of inadequate drainage shall be deemed to exist if:
 - a. Surface or subsurface water retention and runoff is such that it constitutes a danger to the structural security of the proposed structures.
 - b. The proposed subdivision will cause pollution of water sources or damage from erosion and siltation on downhill or downstream land.
 - c. The proposed site grading and development will cause harmful and irreparable damage from erosion and siltation on downstream land.
 - d. Factors to be considered in making these determinations may include average rainfall for the area, the relation of the land to floodplains, the nature of soils and subsoils and their ability to adequately support surface water runoff and waste disposal systems, the slope of the land and its effect on effluents, and the presence of streams as related to effluent disposal.

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- (2) *Lack of adequate water supply.* A proposed subdivision shall be deemed to lack an adequate water supply if the proposed subdivision does not have adequate sources of water to serve the proposed subdivision if developed to its maximum permissible density without causing an unreasonable depreciation of existing water supplies for surrounding areas.
- (3) *Lack of adequate roads or highways to serve the subdivision.* A proposed subdivision shall be deemed to lack adequate roads or highways to serve the subdivision when:
- a. Roads which serve the proposed subdivision are of such a width, grade, stability, vertical and horizontal alignment, site distance and surface condition that an increase in traffic volume generated by the proposed subdivision would create a hazard to public safety and general welfare, or seriously aggravate an already hazardous condition, and when, with due regard to the advice of county or state department of highways, the roads are inadequate for the intended use.
 - b. The traffic volume generated by the proposed subdivision would create unreasonable highway congestion or unsafe conditions on highways existing at the time of the application or proposed for completion within the next two years.
- (4) *Lack of adequate waste disposal systems.* A proposed subdivision shall be deemed to lack adequate waste disposal systems if in subdivisions for which sewer lines are proposed there is inadequate sewer capacity in the present system to support the subdivision if developed to its maximum permissible density indicated in the comprehensive plan of the city, as may be amended.
- (5) *Inconsistency with comprehensive plan.* The proposed subdivision is inconsistent with the purposes, objectives and recommendations of the duly adopted comprehensive plan of the city.
- (6) *Providing public improvements.* If public improvements, such as recreational facilities, or other public facilities, reasonably necessitated by the subdivision, which must be provided at public expense, cannot be reasonably provided for within the next two fiscal years.
- (7) *State environmental policies.* The proposed subdivision is inconsistent with the policies of the state environmental quality board and could adversely impact critical environmental areas or potentially disrupt or destroy historic areas which are designated or officially recognized by the council in violation of federal and state historical preservation laws.

(Code 1985, § 12.11(4)(A))

Sec. 40-119. Burden of establishing.

The burden shall be upon the applicant to show that the proposed subdivision is not premature.

(Code 1985, § 12.11(4)(B))

Secs. 40-120—40-136. Reserved.

ARTICLE III. PLAT AND DATA REQUIREMENTS

DIVISION 1. GENERALLY

Sec. 40-137. Sketch plans.

Sketch plans shall contain, at a minimum, the following information:

- (1) Plat boundary.
- (2) North arrow.
- (3) Scale.
- (4) Street layout on and adjacent to plat.
- (5) Designation of land use and current or proposed zoning.
- (6) Significant topographical or physical features.
- (7) General lot locations and layout.
- (8) Preliminary evaluation by the applicant that the subdivision is not classified as premature pursuant to criteria set forth in this article.

(Code 1985, § 12.20(1))

Secs. 40-138—40-157. Reserved.*DIVISION 2. PRELIMINARY PLAT***Sec. 40-158. Required; content.**

The subdivider shall prepare and submit a preliminary plat, together with any necessary supplemental information. The preliminary plat shall contain the information set forth in this division.

(Code 1985, § 12.20(2)(intro. ¶))

Sec. 40-159. Project identification and scope.

The preliminary plat shall include:

- (1) Proposed name of subdivision; names shall not duplicate or too closely resemble names of existing subdivisions.
- (2) Location of boundary lines in relation to a known section, quarter section or quarter-quarter section lines comprising a legal description of the property.
- (3) Names and addresses of all persons having property interest, the developer, designer and surveyor together with their registration number.
- (4) Graphic scale or plat, not less than one inch to 100 feet.
- (5) Data and north arrow.

(Code 1985, § 12.20(2)(A))

Sec. 40-160. Existing conditions.

The preliminary plat shall also disclose the following existing conditions:

- (1) Boundary line and total acreage of proposed plat clearly indicated.
- (2) Existing zoning classifications for land within and abutting the subdivision.
- (3) Location, widths and names of all existing or previously platted streets or other public ways, showing type, width and condition of improvements, if any, railroad and utility rights-of-way, parks and other public open spaces, permanent buildings and structures, easements and section and corporate lines within the tract and to a distance of 100 feet beyond the tract.
- (4) Location and size of existing sewers, water mains, culverts or other underground facilities within the tract and to a distance of 100 feet beyond the tract. Such data as grades, invert elevations and locations of catchbasins, manholes and hydrants shall also be shown.
- (5) Boundary lines of adjoining unsubdivided or subdivided land, within 100 feet, identified by name and ownership, including all contiguous land owned or controlled by the subdivider.
- (6) Topographic data of the site and area within 100 feet, including contours at vertical intervals of not more than two feet. Watercourses, wetlands, rock outcrops, power transmission poles and lines, and other significant features shall also be shown.
- (7) In plats where public water and sewer are not available, the subdivider shall file a report prepared by a registered civil engineer on the feasibility of individual on-site sewer and water systems on each lot and shall include soils boring analysis and percolation tests to verify conclusions.

(Code 1985, § 12.20(2)(B))

Sec. 40-161. Proposed design features.

- (a) *Generally.* The preliminary plat shall include the proposed design features, including, at a minimum, the following:
 - (1) *Streets.* Layout of proposed streets showing the right-of-way widths, centerline gradients, typical cross-sections, and proposed names of streets in conformance with city and county street identification policies. The name of any street heretofore used in the city or its environs shall not be used unless the proposed street is a logical extension of an already named street, in which event the same name shall be used.
 - (2) *Alleys and pedestrian ways.* Locations and widths of proposed alleys and pedestrian ways.
 - (3) *Water and sewer lines.* Locations and size of proposed sewer lines and water mains.
 - (4) *Easements.* Location, dimension and purpose of all easements.
 - (5) *Lots and blocks.* Layout, numbers, lot areas and preliminary dimensions of lots and blocks.
 - (6) *Street setbacks.* Minimum front and side street building setback lines. When lots are located on a curve, the width of the lot at the building setback line.
 - (7) *Public use areas.* Areas, other than streets, alleys, pedestrian ways and utility easements, intended to be dedicated or reserved for public use, including the size of such area or areas in acres.
 - (8) *Grading plan.* Grading plan which shall include the proposed grading and drainage of the site and the garage floor or basement elevations of all structures.

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- (b) *Design standards compliance.* The preliminary plat shall demonstrate proposed compliance with the following design standards:
- (1) *Water supply.* Water mains shall be provided to serve the subdivision by extension of an existing community system wherever feasible. Service connections shall be stubbed into the property line and all necessary fire hydrants shall also be provided. Extensions of the public water supply system shall be designed so as to provide public water in accordance with the standards of the city. In areas where public water supply is not available, individual wells shall be provided on each lot, properly placed in relationship to the individual sewage disposal facilities on the same and adjoining lots. Well plans must comply with the provisions of Minn. R. ch. 4725, wells and borings, and be submitted for the approval of the city engineer.
 - (2) *Sewage disposal, public.* Sanitary sewer mains and service connections shall be installed in accordance with the standards of the city.
 - (3) *Sewage disposal, private.* All on-site septic systems shall be installed in accordance with all applicable state pollution control agency regulations and the provisions of this Code.
 - (4) *Stormwater management.* All stormwater conveyance systems shall be designed to handle the 24-hour ten year storm event. Construction and permanent best management practices shall be designed in accordance with all applicable state pollution control agency regulations and the provisions of this Code.

(Code 1985, § 12.20(2)(C); Ord. No. 2022-6 , 10-3-2022)

Sec. 40-162. Supplementary information as requested.

- (a) *Generally.* In addition to all other information required by this division, supplementary information shall be submitted when deemed necessary by the city staff, consultants, advisory bodies or the council. Such information may include:
- (1) Proposed protective covenants.
 - (2) An accurate soil survey of the subdivision prepared by a qualified person.
 - (3) A survey prepared by a qualified person identifying tree coverage in the proposed subdivision in terms of type, weakness, maturity, potential hazard, infestation, vigor, density and spacing.
 - (4) Statement of the proposed use of lots stating type of buildings with number of proposed dwelling units or type of business or industry, so as to reveal the effect of the development on traffic, fire hazards, and congestion of population.
 - (5) Provision for surface water disposal, ponding, drainage and flood control.
 - (6) A drainage plan for soil erosion and sediment control both during construction and after development has been completed including:
 - a. Gradients of waterways;
 - b. Design of velocity and erosion control measures;
 - c. Design of sediment control measures; and
 - d. Landscaping of the erosion and sediment control system.
 - (7) A vegetation preservation and protection plan that shows those trees proposed to be removed, those to remain, the types and locations of trees and other vegetation that are to be planted.
 - (8) Such other information as may be required as documented in writing by the city staff.

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- (b) *Planned zoning changes.* When zoning changes are contemplated, the proposed zoning plan for the areas, including dimensions, shall be shown. Such proposed zoning plan shall be for information only and shall not vest any rights in the applicant.
 - (c) *Sketch plan of adjacent parcels.* When the subdivider owns property adjacent to that which is being proposed for the subdivision, it shall be required that the subdivider submit a sketch plan of the remainder of the property so as to show the possible relationships between the proposed subdivision and the future subdivision. In any event, all subdivisions shall be required to relate well with existing or potential adjacent subdivisions.
 - (d) *Statement of developer's ability to develop.* When the city has agreed to install improvements in a development, the developer may be required to furnish a financial statement satisfactory to the city indicating the developer's ability to develop the plat.
 - (e) *Lots subject to potential replat.* When structures are to be placed on large or excessively deep lots which are subject to potential replat, the preliminary plat shall indicate a logical way in which the lots could possibly be resubdivided in the future.

(Code 1985, § 12.20(2)(D))

Secs. 40-163—40-192. Reserved.

DIVISION 3. FINAL PLAT

Sec. 40-193. Required; contents.

The owner or subdivider shall submit a final plat together with any necessary supplemental information. The final plat, prepared for recording purposes, shall be prepared in accordance with state law and county regulations. The final plat shall contain the following information:

- (1) Name of the subdivision, which shall not duplicate or too closely approximate the name of any existing subdivision.
- (2) Location by section, township, range, county and state, and including descriptive boundaries of the subdivision, based on an accurate traverse, giving angular and linear dimensions which must mathematically close. The allowable error closure of any portion of a final plat shall be one foot in 7,500 feet.
- (3) The location of monuments in reference to existing official monuments on the nearest established street lines, including true angles and distances to such reference points or monuments.
- (4) Location of lots, streets, public highways, alleys, parks and other features, with accurate dimensions in feet and decimals of feet, with the length of radii or arcs of all curves, and with all other information necessary to reproduce the plat on the ground shall be shown. Dimensions shall be shown from all angle points of curve to lot lines.
- (5) Lots and block numbers with numbers shown clearly in the center of the lot or block.
- (6) The exact locations, widths and names of all streets to be dedicated.
- (7) Location and width of all easements to be dedicated.
- (8) Name and address of surveyor making the plat.
- (9) Scale of plat (the scale to be shown graphically on a bar scale), date and north arrow.

(10) Statement dedicating all easements for installation and maintenance of utilities and drainage facilities reserved over, under and along the strips marked utility easements.

(11) Statement dedicating all streets, alleys and other public areas not previously dedicated to public use.

(Code 1985, § 12.20(3))

Sec. 40-194. Address map required; form.

An address map shall be prepared in accordance with city and county policy and shall include all addresses of lots as platted.

(Code 1985, § 12.20(4))

Sec. 40-195. Certifications required; form.

The final plat shall include:

- (1) Certification by registered surveyor in the form required by M.S.A. § 505.03.
- (2) Execution of all owners of any interest in the land and any holders of a mortgage thereon of the certificates required by M.S.A. § 505.02, including a dedication of the utility easements and other public areas in such form as approved by the council.
- (3) Space for certificates of approval and review to be filled in by the signatures of the chairperson of the planning commission and the mayor and city clerk. The form of such certificate of approval is on file in the office of the city clerk.

(Code 1985, § 12.20(5))

Secs. 40-196—40-213. Reserved.

ARTICLE IV. DESIGN STANDARDS

Sec. 40-214. Purpose and intent.

- (a) It is the intent of this article that subdivisions are designed to provide livable, sustainable environments appropriate to the land uses for which they are being built. Considerations of design shall include:
 - (1) Connectivity to neighboring lands as well as to other places in the community;
 - (2) Focus on development of amenities that enhance the environment and character of the area;
 - (3) Vistas and views that provide interest and avoid repetitiveness; and
 - (4) Maximization of aspects of the natural or built environment as assets to the neighborhood.
- (b) Proposed subdivisions that are found to fail to meet these objectives of subsection (a) of this section, as well as those of the city's comprehensive plan and other planning documents, may be rejected as being in violation of this chapter.

Sec. 40-215. Minimum design features.

The design features set forth in this article are minimum requirements. The city may impose additional or more stringent requirements concerning lot size, streets and overall design as deemed appropriate considering the property being subdivided.

(Code 1985, § 12.30(9))

Sec. 40-216. Blocks.

- (a) *Length.* In general, intersecting streets, determining block lengths, shall be provided at such intervals so as to serve cross-traffic adequately and to meet existing streets. When no existing plats control, the blocks in residential subdivisions should not exceed 1,325 feet nor be less than 400 feet in length, except where topography or other conditions justify a departure from this maximum. In blocks longer than 800 feet, pedestrian ways or easements through the block may be required near the center of the block.
- (b) *Width.* The width of the block shall normally be sufficient to allow two tiers of lots of appropriate depth. Blocks intended for business or industrial use shall be of such width as to be considered most suitable for their respective use, including adequate space for off-street parking and deliveries.

(Code 1985, § 12.30(1))

Sec. 40-217. Lots.

- (a) *Area.* The minimum lot area, width and depth shall not be less than that established by chapter 50 in effect at the time of adoption of the final plat.
- (b) *Corner lots.* Corner lots for residential use shall have additional width to permit appropriate building setback from both streets as required in chapter 50.
- (c) *Side lot lines.* Side lines of lots shall be approximately at right angles to street lines or radial to curved street lines.
- (d) *Frontage.* Every lot must have the minimum frontage on a city approved and constructed street other than an alley, as required by the city zoning regulations.
- (e) *Setback lines.* Setback or building lines shall be shown on all lots intended for residential use and shall not be less than the setback required by chapter 50, as may be amended.
- (f) *Watercourses.* Lots abutting a watercourse, wetland, ponding area or stream shall have additional depth and width, as required under the provisions of chapter 50.
- (g) *Features.* In the subdividing of land, due regard shall be shown for all-natural features, such as tree growth, watercourses, existing topography, views and vistas, historic spots or similar conditions which, if preserved, will add attractiveness and stability to the proposed development. Failure to comply with the requirements of this subsection shall be a basis for rejection of the proposed subdivision.
- (h) *Lot remnants.* All remnants of lots below minimum size left over after subdividing of a larger tract must be added to adjacent lots, rather than allowed to remain as unusable parcels.
- (i) *Political boundaries.* No singular plot shall extend over a political boundary or school district line without document notification to affected units of government.
- (j) *Frontage on two streets.* Double frontage, or lots with frontage on two parallel streets shall not be permitted except: where lots back on arterial streets or highways, or where topographic or other conditions render

subdividing otherwise unreasonable. Such double frontage lots shall have an additional depth of at least 20 feet in order to allow space for screen planting along the back lot line.

- (k) *Turn-around access.* When proposed residential lots abut a collector or arterial street, they should be platted in such a manner as to encourage turn-around access and egress on each lot.
- (l) *City approval of access required for subdivision of certain parcels.* No parcel fronting on a major collector or arterial street shall be subdivided except where all lots in the subdivision can gain city-approved access from a fully improved minor collector or local street.
- (m) *Future uses and phases.* Where the subdivider proposes to create one or more outlots in a plat, the subdivider shall identify the proposed use, ownership, and maintenance responsibilities of any such outlot, all or which are subject to approval of the city. Outlots preserved for future phases of a subdivision shall be shown to be developable with an approved concept plan or preliminary plat as required by the city.

(Code 1985, § 12.30(2))

Sec. 40-218. Streets and alleys.

- (a) *Streets to be continuous.* Except for cul-de-sacs, streets shall connect with streets already dedicated in adjoining or adjacent subdivisions, or provide for future connections to adjoining unsubdivided tracts, or shall be a reasonable projection of streets in the nearest subdivided tracts. The arrangement of thoroughfares and collector streets shall be considered in their relation to the reasonable circulation of traffic, to topographic conditions, to runoff of stormwater, to public convenience and safety, and in their appropriate relation to the proposed uses of the area to be served.
- (b) *Local streets and dead-end streets.* Local streets should be so planned as to discourage their use by non-local traffic. Dead-end streets are prohibited, but culs-de-sac shall be permitted where topography or other physical conditions justify their use. Cul-de-sac shall not be longer than 500 feet, including a terminal turn around which shall be provided at the closed end, with a right-of-way radius of not less than 60 feet.
- (c) *Street plans for future subdivisions.* When the plat to be submitted includes only part of the tract owned or intended for development by the subdivider, a tentative plan of a proposed future street system for the unsubdivided portion shall be prepared and submitted by the subdivider demonstrating that such plan will provide a reasonable extension of the street system based on soils, topography, watercourses, or other conditions.
- (d) *Resubdivision of large lots and parcels.* When a tract is subdivided into larger than normal building lots or parcels, such lots or parcels shall be so arranged as to permit the logical location and openings of future streets and appropriate resubdivision, with provision for adequate utility connections for such resubdivision.
- (e) *Street intersections.* Under normal conditions, streets shall be laid out so as to intersect as nearly as possible at right angles, except where topography or other conditions justify variations. Under normal conditions, the minimum angle of intersection of streets shall be 80 degrees. Street intersection jogs with an offset of less than 125 feet shall be avoided.
- (f) *Subdivisions abutting major rights-of-way.* When the proposed subdivision contains or is adjacent to the right-of-way of a federal or state highway or thoroughfare, provision may be made for a marginal access street approximately parallel and adjacent to the boundary of such right-of-way, provided that due consideration is given to proper circulation design, or for a street at a distance suitable for the appropriate use of land between such street and right-of-way. Such distance shall be determined with due consideration of the minimum distance required for approach connections to future grade separations, or for lot depths.
- (g) *Temporary turnaround.* Streets that are planned to extend onto adjoining property may be temporarily platted as "dead-end" streets, provided such streets are designed with a temporary turnaround that is

subject to the approval of the city engineer. Such streets may exceed the maximum cul-de-sac length if this design is considered by the city to be the best reasonable alternative design. No variance shall be required in such a case.

- (h) *Sidewalks.* In those cases where the council deems it appropriate, sidewalks of not less than five feet in width shall be provided. When a proposed plat abuts or includes an arterial or major collector street, sidewalks, of not less than five feet in width on both sides of the paved surface shall be provided. When the proposed plat abuts or includes a minor collector or local street, sidewalks of not less than five feet in width shall be required on one side of the street. In all cases where sidewalks are provided provisions shall be made for physically disabled access.
- (i) *Service access, alleys.* Service access shall be provided in commercial and industrial districts for off-street loading, unloading and parking consistent with and adequate for the uses proposed. Except where justified by special conditions, such as the continuation of an existing alley in the same block, alleys will not be approved in residential districts. Alleys, where provided, shall not be less than 30 feet wide. Dead-end alleys shall be avoided wherever possible, but if unavoidable, such dead-end alleys may be approved if adequate turn around facilities are provided at the closed end.
- (j) *Half streets.* Dedication of half streets shall not be considered for approval except where it is essential to the reasonable development of the subdivision and in conformity with the other requirements of these regulations or where it is found that it will be practical to require the dedication of the other half when the adjoining property is subdivided.
- (k) *Compliance with the county thoroughfare plan.* All subdivisions incorporating streets which are identified in the county thoroughfare plan as amended, shall comply with the minimum right-of-way, surfaced width and design standards as outlined in the plan.
- (l) *Street grades.* Except when, upon the recommendation of the city engineer, the topography warrants a greater maximum, the grades in all streets, thoroughfares, collector streets, local streets and alleys in any subdivision shall not be greater than eight percent. In addition, there shall be a minimum grade on all streets and thoroughfares of not less than five-tenths percent.
- (m) *Curb radius.* The minimum curb radii for thoroughfares, collector streets, local streets and alleys shall be 12 feet for arterial streets, collector and local streets and four feet for alleys.
- (n) *Reverse curves.* Minimum design standards for collector and arterial streets shall comply with state aid standards.
- (o) *Reserve strips.* Reserve strips controlling access to streets shall be prohibited except under conditions accepted by the council.
- (p) *Street right-of-way widths.* Street right-of-way widths shall be 100 feet for arterial streets, 80 feet for collector streets, and 60 feet for local streets. The right-of-way width for local streets may be reduced to 50 feet, subject to the approval of the city engineer and city planner, in the case of a unique physical hardship or when prior subdivision approval has occurred.

(Code 1985, § 12.30(3))

Sec. 40-219. Easements.

- (a) *Width and location.* An easement for utilities at least five feet wide shall be provided along all lot lines. If necessary, for the extension of main water or sewer lines or similar utilities, easements of greater width may be required along lot lines or across lots.

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- (b) *Continuous utility easement locations.* Utility easements shall connect with easements established in adjoining properties. These easements, when approved, shall not thereafter be changed without the approval of the council after a public hearing.
 - (c) *Guy wires.* Additional easements for pole guys should be provided, where appropriate, at the outside of turns. When possible, lot lines shall be arranged to bisect the exterior angle so that pole guys will fall alongside lot lines.

(Code 1985, § 12.30(4))

Sec. 40-220. Erosion and sediment control.

- (a) *Conformity with natural topography limitations.* The development shall conform to the natural limitations presented by topography and soil so as to create the least potential for soil erosion.
- (b) *Coordination of control measures.* Erosion and siltation control measures shall be coordinated with the different stages of construction. Appropriate control measures shall be installed prior to development when necessary to control erosion.
- (c) *Incremental development.* Land shall be developed in increments of workable size such that adequate erosion and siltation controls can be provided as construction progresses. The smallest practical area of land shall be exposed at any one period of time.
- (d) *Limited soil exposure.* When soil is exposed, the exposure shall be for the shortest feasible period of time, as specified in the development agreement.
- (e) *Topsoil restoration.* When topsoil is removed, sufficient arable soil shall be set aside for respreading over the developed area. Topsoil shall be restored or provided to a depth of four inches and shall be of a quality at least equal to the soil quality prior to development.
- (f) *Natural vegetation.* Natural vegetation shall be protected wherever practical.
- (g) *Runoff water.* Runoff water shall be diverted to a sedimentation basin before being allowed to enter the natural drainage system.
- (h) *Stormwater pollution prevention plan (SWPPP).* Every applicant for a building permit, subdivision approval, or a permit to allow land disturbing activities that will disturb 1.0 or more acres or is part of a common plan of development must submit a SWPPP to the city.
 - (1) Projects required to submit a SWPPP shall not receive permits until the city has approved the SWPPP.
 - (2) All SWPPPs shall meet or exceed the requirements of the MN General Permit to Discharge Stormwater Associated with Construction Activity No. MN R100001 in place at the time of submittal as modified below:
 - a. All grading plans and building site surveys must be reviewed by the city for the effectiveness of erosion control measures in the context of site topography and drainage.
 - b. *Easements.* If a stormwater management plan involves directing some or all of the site's runoff, the applicant or his designated representative shall obtain from adjacent property owners any necessary easements or other property interests concerning the flowing of such water.
- (i) Inspections and maintenance of temporary and permanent BMPs shall be performed by the applicant during construction.
- (j) Inspections and maintenance shall meet or exceed the criteria listed in the MN General Permit to Discharge Stormwater Associated with Construction Activity No. MN R100001 except as modified below:

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- (1) All off-site tracking shall be removed by the end of the business day unless otherwise authorized by the city.
 - (2) The application shall provide site access during construction to the city for compliance inspections and shall make applicant's records of maintenance and inspections available to the city upon request.
 - a. The city shall notify the applicant of deficiencies identified during city inspections.
 - b. The applicant shall correct deficiencies identified by the city within the timeframe requested by the city.
 - c. Where cooperation is withheld, construction stop orders may be issued by the city, until all erosion and sediment control deficiencies are corrected to the satisfaction of the city.
 - (k) It shall be the responsibility of the applicant to obtain and dedicate to the city any necessary property interests to allow access to the stormwater management facilities for inspection and maintenance purposes.
- (Code 1985, § 12.30(5); Ord. No. 2022-6 , 10-3-2022)

Sec. 40-221. Stormwater runoff control.

- (a) All subdivision design shall incorporate adequate provisions for stormwater runoff consistent with the city storm drainage plan and be subject to review and approval of the city engineer. The rate of runoff for the area being subdivided is to be maintained at a level equal to that which existed in an undeveloped state, except as may be approved by the city engineer.
- (b) Sites that disturb less than 1.0 acres shall be designed to control runoff rate so as to not cause downstream flooding or erosion.
- (c) Sites that disturb 1.0 acre or more shall provide permanent BMPs, with highest preference given to green infrastructure techniques and practices necessary to meet the following conditions on the site of construction activity to the maximum extent practicable.
 - (1) Stormwater release rates and volume from the site on an annual average basis shall not increase over the predevelopment 24-hour two-year, ten-year and 100-year peak storm discharges rates, based on the last ten years of how that land was used. Also accelerated channel erosion must not occur as a result of the proposed activity.
 - (2) Permanent best management practices for sites where the sum of new and reconstructed impervious surface is 1.0 or more acres shall be designed to meet the requirements for post-construction stormwater management as described in the MN Small Municipal Separate Storm Sewer Systems General Permit No. MNR040000 in place at the time of submittal.
 - (3) Applicants shall provide documentation showing rate, volume, and water quality compliance. Calculations shall be by a methodology listed in the MPCA Stormwater Manual or other method approved by the city.
- (d) *Oil and grease control.* Where the potential for pollution by oil, grease, or both, exists, the city may require installation of an oil and grease removal device designed to handle the volume and type of material anticipated. Permanent BMPs installed to fulfill the requirements of this section shall be maintained in compliance with the approved maintenance plan. Where no plan is in place they shall be maintained in compliance with accepted industry standard and MPCA recommendations. No permanent BMPs shall be removed or altered in such a way to decrease effectiveness without:
 - (1) Authorization of the city; and

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- (2) Providing new or improved structural stormwater best management practices providing or exceeding that amount lost due to the alteration or removal.
 - (e) Where the city council authorizes the construction of private stormwater management facilities, the applicant shall in an agreement to be recorded against the properties being developed provide the following:
 - (1) List all permanent BMPs covered by the agreement.
 - (2) Designate the responsible party for inspection and maintenance of each BMP.
 - (3) Detail a maintenance plan for each BMP.
 - (4) Provide access in perpetuity for inspection of the facilities by the city.
 - (5) Provide that if upon written notice by the city that corrective actions are required the responsible party fails to make the necessary corrective action, the city may enter the property and perform the required maintenance with the cost of such maintenance to be paid by the property owner.
 - (6) If the expense is not paid, the expense will be made a special assessment against the property concerned.

(Code 1985, § 12.30(6); Ord. No. 2022-6 , 10-3-2022)

Sec. 40-222. Preservation of environmentally sensitive areas.

- (a) When land proposed for subdivision is deemed environmentally sensitive by the city, due to the existence of wetlands, drainageways, watercourses, floodable areas or steep slopes, the design of the subdivision shall clearly reflect all necessary measures of protection to insure against adverse environmental impact.
- (b) Based upon the necessity to control and maintain certain sensitive areas, the city shall determine whether the protection will be accomplished through lot enlargement and redesign or dedication of those sensitive areas in the form of protection shall include design solutions which allow for construction and grading involving a minimum of alteration to sensitive areas.
- (c) When sensitive areas are to be incorporated into lots within the proposed subdivision, the subdivider shall be required to demonstrate that the proposed design will not require construction on slopes over 18 percent or result in significant alteration to the natural drainage system such that adverse impacts cannot be contained within the plat boundary.

(Code 1985, § 12.30(7))

Sec. 40-223. Park land dedication.

- (a) *When required.* As a prerequisite to plat approval, subdividers shall dedicate land for parks, playgrounds, public open spaces or trails or shall make a cash contribution to the city's park fund as provided by this subdivision. In the case of a replat of previously subdivided property where a park dedication or contribution has been made or where the previously subdivided lots are less than 70 percent of current lot area standards, no park dedication or contribution shall be required. No park dedication or contribution shall be required in the case of a minor subdivision where land is being added to an existing parcel for the creation of a larger lot.
- (b) *Suitability for intended use.* Land to be dedicated shall be reasonably suitable for its intended use and shall be at a location convenient to the people to be served. Factors used in evaluating the adequacy of proposed park and recreation areas shall include size, shape, topography, geology, hydrology, tree cover, access and location.

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- (c) *Recommendations of park and recreation committee.* The park and recreation committee shall recommend to the council the land dedication and cash contribution requirements for proposed subdivisions. Changes in density of plats shall be reviewed by the park and recreation committee for reconsideration of park dedication and cash contribution requirements.
- (d) *Coordination with and conformity to city official map and comprehensive plan.* When a proposed park, playground, recreational area, school site or other public ground has been indicated in the city's official map or comprehensive plan and is located in whole or in part within a proposed plat, it shall be designated as such on the plat and shall be dedicated to the appropriate governmental unit. If the subdivider elects not to dedicate an area in excess of the land required hereunder for such proposed public site, the city may consider acquiring the site through purchase or condemnation.
- (e) *Land area to be excluded from density and PUD open space calculations.* Land area conveyed or dedicated to the city shall not be used in calculating density requirements of chapter 50 and shall be in addition to and not in lieu of open space requirements for planned unit developments.
- (f) *Private open spaces.* When private open space for park and recreation purposes is provided in a proposed subdivision, such areas may be used for credit, at the discretion of the council, against the requirement of dedication for park and recreation purposes, provided the council finds it is in the public interest to do so.
- (g) *Provision for future growth and development.* The city, upon consideration of the particular type of development, may require larger or lesser parcels of land to be dedicated if the city determines that present or future residents would require greater or lesser land for park and playground purposes. In addition, the council may also require lots within the subdivision to be held in escrow for future sale or development. The moneys derived from the sale of escrowed lots will be used to develop or to purchase park land in the future.
- (h) *Minimum land and cash donation in residential areas.* In residential plats, one acre of land shall be conveyed to the city by warranty deed as an outlot for every 75 people the platted land could house based upon the following population factors:
- (1) For single-family detached dwelling lots: 3.5 persons.
 - (2) For two-family dwelling lots: 6.0 persons (3.0 per unit).
 - (3) For apartments, townhouses, condominiums and other dwelling units: one person per bedroom.
 - (4) In addition to this land dedication, the developer shall pay a cash donation for neighborhood park development in the amount provided in the city fee schedule.
- (i) *Cash donations in lieu of donation.* In lieu of a full park land donation, the city may require cash donations based on the ratio of land actually donated to the required land donation as required by this section. The amount of cash donation shall be set per unit by resolution of the city council. In addition to this amount, the developer shall pay a cash donation for neighborhood park development in the amount provided in the city fee schedule.
- (j) *Combined donations; determination of relative values.* The city may elect to receive a combination of cash, land and development of the land for park use. The fair market value of the land the city wants and the value of the development of the land shall be calculated. That amount shall be subtracted from the cash contribution required by subsection (i) of this section. The remainder shall be the cash contribution requirement.
- (k) *Determination of fair market value.* Fair market value shall be determined as of the time of filing the final plat in accordance with the following:
- (1) The city and the developer may agree as to the fair market value.

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- (2) The fair market value may be based upon a current appraisal submitted to the city by the subdivider at the subdivider's expense. The appraisal shall be made by appraisers who are approved members of the SREA, MAI, or equivalent real estate appraisal societies.
 - (3) If the city disputes such appraisal the city may, at the subdivider's expense, obtain an appraisal of the property by a qualified real estate appraiser, which appraisal shall be conclusive evidence of the fair market value of the land.
- (l) *Planned development with mixed land uses.* Planned developments with mixed land uses shall make cash or land contributions in accordance with this chapter based upon the percentage of land devoted to the various uses.
- (m) *Time for calculation and payment of cash contributions.* Park cash contributions are to be calculated at the time of final plat approval. The council may approve a delay in the payment of cash requirements provided that an agreement is executed guaranteeing such payment in accordance with the following:
- (1) *Payment in full permitted.* Any developer may elect to pay in full park fees based on the rate in effect at the time of the final plat approval.
 - (2) *Payment in full required.* Plats with park fees of up to \$2,500.00 must be paid in full when the council approves the final plat.
 - (3) *Payment plan, 12 months.* Plats with park fees of \$2,501.00 to \$7,500.00 are payable as follows:
 - a. At least one-third of the fee must be paid when the final plat is approved by the council, one-half of the balance no later than six months from the date of final plat approval and the final balance not later than 12 months from the date of final plat approval.
 - b. No interest will be charged on the payments during the 12 months.
 - c. Payments on a per lot dwelling unit or acreage basis will be required when building permits are applied for that exceed the amount paid on the payment schedule for the units or acreage involved.
 - d. Credit will be applied on future schedule payments when park fees are paid in advance at the time a building permit is applied for.
 - (4) *Payment plan, 24 months.* Plats with park fees of \$7,501.00 to \$15,000.00 are payable as follows:
 - a. At least one-third of the fee must be paid when the final plat is approved by the council, and one-half of the balance must be paid no later than 12 months from the date of final plat approval. No interest will be charged on the money due and paid during the first 12 months.
 - b. The final payment must be paid not later than 24 months from the date of final plat approval by the council, and interest at a rate set forth in the development contract shall be charged on the park fees due and paid after 12 months.
 - c. Payments on a per lot dwelling unit or acreage basis will be required when building permits are applied for that exceed the amount paid on the payment schedule for the units or acreage involved.
 - d. Credit will be applied on future schedule payments when park fees are paid in advance at the time a building permit is applied for.
 - (5) *Payment plan, 36 months.* Plats with park fees over \$15,001.00 are payable as follows:
 - a. At least one-third of the fee must be paid when the plat is approved by the council.
 - b. One-third of the balance must be paid not later than 12 months after the date of final plat approval by the council. No interest will be charged during the first 12 months.

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- c. Another one-third of the balance must be paid not later than 24 months after final plat approval, and interest will be charged on the entire unpaid balance at a rate as set forth in the development agreement on the plat or development.
 - d. The final third of the balance must be paid not later than 36 months from the date of final plat approval with interest except as stated in subsection (m)(5)b of this section.
 - e. Payments on a per lot dwelling unit or acreage basis will be required when building permits are applied for that exceed the amount paid on the payment schedule for the units or acreage involved.
 - f. Credit will be applied on future schedule payments when park fees are paid in advance at the time a building permit is applied for.
- (n) *Used of cash contributions restricted.* Cash contributions shall be deposited in the park and recreation development fund and shall only be used for park acquisition or development.
 - (o) *Conditions under which city council may determine reasonable cash contribution.* If a subdivider is unwilling or unable to make a commitment to the city as to the type of building that will be constructed on lots in the proposed plat, then the land and cash contribution requirement will be a reasonable amount as determined by the council.
 - (p) *Land excluded from contribution calculation; exceptions.* Wetlands, ponding areas, easements, and drainageways accepted by the city shall not be considered in the park land or cash contribution to the city; provided, however, that if the city desires to accept such an area for the construction of recreational facilities, but because of the natural condition of the land or the existence of an easement or other encumbrance the recreational development of the property is limited, the city may choose to accept the land dedication and grant a credit against the developer's required land dedication equal to 50 percent of the area of the subject land.

(Code 1985, § 12.30(8))

Sec. 40-224. Trunk sanitary sewer and watermain fees.

As a condition to subdivision plat approval, subdividers shall pay both a trunk sanitary sewer fee and a trunk watermain fee to the city to fund the sanitary sewer and watermain improvements required by the proposed development. The city shall establish the trunk fees by resolution based on the subdivision's acreage and shall periodically update the fees to account for changes in costs and revenues. The city shall incorporate these trunk fees into a development agreement with the subdivider.

(Code 1985, § 12.31)

Secs. 40-225—40-241. Reserved.

ARTICLE V. REQUIRED IMPROVEMENTS

Sec. 40-242. Payment of fees and expenses; developer's agreement required.

- (a) Before a final plat is delivered by the city, the subdivider of the land covered by the plat shall pay all applicable fees and execute and submit to the council a developer's agreement which shall be binding on his heirs, personal representatives and assigns.

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- (b) Prior to the delivery of the approved final plat, the subdivider shall deposit with the city treasurer an amount equal to a minimum of 125 percent of the city engineer's estimated cost of the required improvements within the plat, either in a cash escrow performance bond, or letter of credit. The surety shall be approved by the city.
- (c) The cash escrow letter of credit or performance and indemnity bond shall be conditioned upon:
- (1) The making and installing of all of the improvements required by the terms and conditions set forth by the city within one year unless an extension is granted by the council.
 - (2) Satisfactory completion of the work and payment therefor, which work was undertaken by the subdivider in accordance with the developer's agreement referred to in subsection (a) of this section.
 - (3) The payment by the subdivider to the city of all expenses incurred by the city, subject to the following:
 - a. Payment shall include, but not be limited to, expenses for engineering, planning, fiscal, legal, construction and administration.
 - b. In instances where a cash escrow is submitted in lieu of a letter of credit or performance and indemnity bond, there shall be a cash escrow agreement which shall provide that in the event the required improvements are not completed within one year, all amounts held under the cash escrow agreement shall be automatically turned over and delivered to the city and applied by the city to the cost of completing the required improvements.
 - c. If the funds available within the cash escrow agreement are not sufficient to complete the required improvements, the necessary additional cost to the city may be assessed against the subdivision.
 - d. Any balance remaining in the cash escrow fund after such improvements have been made and all expenses therefor have been paid, shall be returned to the subdivider.
 - e. In instances where a letter of credit is used in lieu of a cash escrow or performance and indemnity bond, the letter of credit shall be in a form satisfactory to the city and the terms thereof shall substantially comply with the procedure set forth for a cash escrow fund.
 - f. In instances where a performance and indemnity bond is used in lieu of a cash escrow or letter of credit, the bond shall be in a form acceptable to the city and shall comply with all requirements as set forth in state law, as amended, which statutes relate to surety bonds.

(Code 1985, § 12.40(1)(A), (B))

Sec. 40-243. City engineer's compliance report.

No final plat shall be approved by the council without first receiving a report from the city engineer that the improvements described therein together with required agreements and documents meet the requirements of the city. The city administrator shall also certify that all fees required to be paid to the city in connection with the plat have been paid or that satisfactory arrangements have been made for payment.

(Code 1985, § 12.40(1)(C))

Sec. 40-244. Submission of warranty and maintenance bond.

The city shall, where appropriate, require of a subdivider submission of a warranty and maintenance bond in the amount equal to the original cost of the improvements, or an amount as may be determined by the city

engineer, which shall be in force for one year following the final acceptance of any required improvements and shall guarantee satisfactory performance of the improvements.

(Code 1985, § 12.40(1)(D))

Sec. 40-245. Reproducible as-building drawings required.

Reproducible as-built drawings as required by the city engineer shall be furnished to the city by the subdivider of all required improvements. Such as-built drawings shall be certified to be true and accurate by the registered engineer responsible for the installation of the improvements.

(Code 1985, § 12.40(1)(E))

Sec. 40-246. Approval of required improvements and payment of associated expenses.

All of the required improvements to be installed under the provisions of this chapter shall be approved by and subject to the inspection of the city engineer. All of the city's expenses incurred as the result of the required improvements shall be paid either directly, indirectly or by reimbursement to the city by the subdivider.

(Code 1985, § 12.40(1)(F))

Sec. 40-247. Monuments.

- (a) Official monuments, as designated and adopted by the county surveyor's office and approved by the county district court for use as judicial monuments, shall be set at each corner or angle on the outside boundary of the final plat or in accordance with a plan as approved by the city engineer. The boundary line of the property to be included with the plat to be fully dimensioned; all angles of the boundary excepting the closure angle to be indicated; all monuments and surveyor's irons to be indicated, each angle point of the boundary perimeter to be so monumented.
- (b) Pipes or steel rods shall be placed at each lot. All federal, state, county or other official benchmarks, monuments or triangular stations in or adjacent to the property shall be preserved in precise position and shall be recorded on the plat. All lot and block dimensions shall be shown on the plat and all necessary angles pertaining to the lots and blocks, as an aid to future surveys shall be shown on the plat. No ditto marks shall be permitted in indicating dimensions.
- (c) To ensure that all irons and monuments are correctly in place following the final grading of a plat, a second monumentation shall be in the form of a surveyor's certificate and this requirement shall additionally be a condition of certificate of occupancy as provided for in chapter 50, as may be amended.

(Code 1985, § 12.40(2))

Sec. 40-248. Street improvements.

- (a) *Generally.* All streets shall be improved in accordance with the standards and specifications for street construction as required by the council. All streets to be surfaced shall be of an overall width in accordance with the standards and specifications for construction as approved by the council. The portion of the right-of-way outside the area surfaced shall be sodded or ripped by the developer if deemed necessary.
- (b) *Grading.* The full width of the right-of-way shall be graded in accordance with the provisions for construction provided in this chapter.

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- (c) *Curbs and gutters.* When required, the curb and gutter shall be constructed in accordance with the standards and specifications for street construction as set forth and approved by the council.
 - (d) *Grade and drainage easements.* The grade and drainage requirements for each plat shall be approved by the city engineer at the expense of the applicant. Every plat presented for final signature shall be accompanied by a certificate of the city engineer that the grade and drainage requirements have been met.
 - (e) *Stormwater disposal plan.* In an area not having municipal storm sewer trunk, the applicant shall be responsible, before platting, to provide a stormwater disposal plan, without damage to properties outside the platted area, and the stormwater disposal plan shall be submitted to the city engineer, who shall report to the council on the feasibility of the plan presented. No plat shall be approved before an adequate stormwater disposal plan is presented and approved by the city engineer and council. The use of dry wells for the purpose of stormwater disposal is prohibited.
 - (f) *Trees and boulevard sod.* Trees and boulevard sodding shall be planted in conformance with the standards and specifications as required by the council.
 - (g) *Street signs.* Street signs of the design approved by the council shall be installed at each street intersection.
 - (h) *Driveway approaches.* Driveway approaches shall be installed, as required by the council.
 - (i) *Sidewalks.* Sidewalks shall be installed along both sides of all streets in the subdivision, in accordance with the standards and specifications for construction as approved by the council.
 - (j) *Bicycle and pedestrian pathways.* Bicycle and pedestrian pathways shall be installed along all collector streets, or as required by the council, and generally in conformance with the city's parks and trails master plan.
 - (k) *Street lighting fixtures.* Street lighting fixtures as may be required by the council shall be installed.

(Code 1985, § 12.40(3))

Sec. 40-249. Sanitary sewer and water distribution improvements.

Sanitary sewers and water facilities shall be installed in accordance with the standards and specifications as required by the council and subject to the approval of the city engineer. When city sewer and water facilities are not available for extension into proposed subdivision, the council may permit the use of individual water and sewer systems in accordance with all appropriate state and local regulations.

(Code 1985, § 12.40(4))

Sec. 40-250. Public utilities.

Telephone, electric or gas service lines are to be placed underground in accordance with all applicable provisions of this Code.

(Code 1985, § 12.40(5))

Sec. 40-251. Railroad crossings.

No street dedications will be accepted which require a crossing of a railroad unless sufficient land as determined by the council is dedicated to insuring a safe view.

(Code 1985, § 12.40(7))

Sec. 40-252. Election by city to install improvements.

It is the subdivider's responsibility to install all required improvements except that the city reserves the right to elect to install all or any part of the improvements required under the provisions of this chapter pursuant to M.S.A. ch. 429. If the city elects to install the improvements, the developer shall post a cash escrow or letter of credit guaranteeing payment of the assessments.

(Code 1985, § 12.40(6))

Sec. 40-253. Landscaping installation.

- (a) For subdivisions that create one or more single- or two-family residential parcels, landscaping shall be installed equal to two trees per street frontage, sod, seed and other landscaping as required in section 50-358(b).
- (b) For subdivisions other than single- or two-family residential parcels, a landscaping plan shall be submitted for consideration and approval by the city as part of the preliminary plat submittals. Landscaping shall be found to be suitable for the unit and lot design, as well as for the environmental conditions on and around the parcels. The landscaping plan shall also be consistent with the requirements of section 50-358.

Secs. 40-254—40-282. Reserved.***ARTICLE VI. VARIANCES*****Sec. 40-283. When permitted.**

- (a) The planning commission may recommend a variance from the minimum standards of this chapter (but not of procedural provisions) when, in its opinion, undue hardship may result from strict compliance. In recommending any variance, the commission shall prescribe any conditions that it deems necessary to or desirable for the public interest.
- (b) In making its recommendations, the planning commission shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity.
- (c) A variance shall only be recommended when the planning commission finds:
 - (1) That there are special circumstances or conditions affecting the property such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of his land.
 - (2) That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which property is situated.
 - (3) That the variance is to correct inequities resulting from an extreme physical hardship such as topography, etc.
- (d) After considerations of the planning commission recommendations, the council may grant variances, subject to the items listed in subsections (c) of this section.

(Code 1985, § 12.50(2)(A))

Sec. 40-284. Procedure.

- (a) *Filing application.* Requests for a variance or appeal shall be filed with the city administrator on an official application form. Such application shall be accompanied by a fee as established by council resolution. Such application shall also be accompanied by five copies of detailed written and graphic materials necessary for the explanation of the request.
- (b) *Referral to planning commission.* Upon receiving the application, the city administrator shall refer the application, along with all related information, to the planning commission for a report and recommendation to the council.
- (c) *Consideration by planning commission.* The planning commission shall consider the variance at its next regular meeting unless the filing date falls within 15 days of the meeting, in which case the request would be placed on the agenda and considered at the regular meeting following the next regular meeting.
- (d) *City staff to submit reports and recommendations to planning commission.* The variance application shall be referred to the city staff for a report and recommendation to be presented to the commission.
- (e) *Requests for additional information from applicant.* The planning commission and city staff shall have authority to request additional information from the applicant concerning the variance or to retain expert testimony with the consent and at the expense of the applicant concerning the variance where the information is declared necessary to insure preservation of health, safety and general welfare.
- (f) *Schedule of hearing before planning commission; notice.* The planning commission shall request the city administrator set a date for a public hearing. Notice of such hearing shall be published in the official newspaper at least ten days prior to the hearing, and individual notices shall be mailed not less than ten days nor more than 30 days prior to the hearing to all owners of property within 350 feet of the parcel included in the request.
- (g) *Applicant to appear before commission.* The applicant or a representative thereof shall appear before the planning commission in order to answer questions concerning the proposed variance request. Failure of a property owner to receive the notice shall not invalidate any such proceedings as set forth within this article.
- (h) *Commission's findings of fact and recommendations.* The planning commission shall make a finding of fact and recommend such actions or conditions relating to the request as it may deem necessary to carry out the intent and purpose of this chapter.
- (i) *Referral to city council for final review.* The council shall not grant a variance until it has received a report and recommendation from the planning commission and the city staff or until 60 days after the first regular planning commission meeting at which the request was considered. Upon receiving the report and recommendation of the planning commission and city staff, the council shall place the report and recommendation on the agenda for the next regular meeting. Such reports and recommendations shall be entered in and made part of the permanent written record of the council meeting.
- (j) *Findings of fact and grant or denial of application by city council.* The council shall make a recorded finding of fact and impose any condition it considers necessary to protect the public health, safety and welfare. The council shall decide whether to approve or deny a request for a variance or an appeal within 30 days after the public hearing on the request.
- (k) *Required vote of city council.* A variance of this chapter or grant of an appeal shall be by four-fifths vote of the full council.

(Code 1985, § 12.50(2)(B))

Chapter 42 TAXATION³²

ARTICLE I. IN GENERAL

Sec. 42-1. Deferment of special assessments.

- (a) The council may defer the payment of any special assessment on homestead property owned by a person who is 65 years of age or older, or who is retired by virtue of permanent and total disability, and the administrator is authorized to record the deferment of special assessments where the following conditions are met:
 - (1) The applicant must apply for the deferment not later than 90 days after the assessment is adopted by the council.
 - (2) The applicant must be the owner of the property.
 - (3) The applicant must occupy the property as his principal place of residence.
 - (4) The applicant's income from all sources shall not exceed the low-income limit as established by the federal Department of Housing and Urban Development as used in determining the eligibility for section VIII housing.
- (b) The deferment shall be granted for as long a period of time as the hardship exists and the conditions as have been met. However, it shall be the duty of the applicant to notify the administrator of any change in his status that would affect eligibility for deferment.
- (c) The entire amount of deferred special assessments shall be due within 60 days after loss of eligibility by the applicant. If the special assessment is not paid within 60 days, the administrator shall add thereto interest at a rate set by resolution of the council from the due date through December 31 of the following year and the total amount of principal and interest shall be certified to the county auditor for collection with taxes the following year.
- (d) Should the applicant plead and prove, to the satisfaction of the council, that full repayment of the deferred special assessment would cause the applicant particular undue financial hardship, the council may order that the applicant pay within 60 days a sum equal to the number of installments of deferred special assessments outstanding and unpaid to date (including principal and interest) with the balance thereafter paid according to the terms and conditions of the original special assessment.
- (e) The option to defer the payment of special assessments shall terminate and all amounts accumulated plus applicable interest shall become due upon the occurrence of any one of the following:
 - (1) The death of the owner when there is no spouse who is eligible for deferment.
 - (2) The sale, transfer or subdivision of all or any part of the property.
 - (3) Loss of homestead status on the property.

³²State law reference(s)—Financial authority of statutory cities, M.S.A. § 412.241; authorized annual tax levies, M.S.A. § 412.251; local lodging tax, M.S.A. § 469.190; local sales taxes, M.S.A. § 297A.99.

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- (4) Determination by the council for any reason that there would be no hardship to require immediate or partial payment.

(Code 1985, § 2.73)

Secs. 42-2—42-20. Reserved.

ARTICLE II. LODGING TAX³³

Sec. 42-21. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Lodging means the furnishing for consideration of lodging at a hotel, motel, roominghouse, tourist court, bed and breakfast, or resort, other than the renting or leasing of lodging for a continuous period of 30 days or more.

Operator means any person or any officer, agent or employee of such person, who provides lodging to another person.

Rent means the total consideration, valued in money, charged for lodging, whether paid in money or otherwise, but shall not include any charges for services rendered in connection with furnishing lodging other than the room charge itself.

(Code 1985, § 6.12(1))

Sec. 42-22. Imposition of tax.

- (a) There is a tax of three percent imposed on the rent charged by an operator for providing lodging to any person. The tax collected by the operator shall be a debt owed by the operator to the city and shall be satisfied only by payment to the city.
- (b) In no case shall the tax imposed upon any operator by this section exceed the amount of tax which the operator is authorized and required by this section to collect from a lodger.

(Code 1985, § 6.12(2))

Sec. 42-23. Collection.

Each operator shall collect the tax imposed by this section at the time rent is paid. The tax collected shall be held in trust by the operator for the city. The amount of tax shall be separately stated from the rent charged for the lodging.

(Code 1985, § 6.12(3))

³³State law reference(s)—Local lodging tax, M.S.A. § 469.190.

Sec. 42-24. Advertising no tax.

It shall be unlawful for any operator to advertise or state to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to rent, or that, if added, it or any part thereof will be refunded. In computing the tax to be collected, amounts of tax less than \$0.01 shall be rounded up to the next cent.

(Code 1985, § 6.12(4))

Sec. 42-25. Payments and return.

- (a) The taxes imposed by this article shall be paid by the operator to the city monthly, not later than 25 days after the end of the month in which the taxes were collected. At the time of payment, the operator shall submit a return upon such forms and containing such information as the city may require. The return shall contain the following minimum information:
 - (1) The total amount of rent collected for lodging during the period covered by the return.
 - (2) The amount of tax required to be collected and due for the period.
 - (3) The signature of the person filing the return or that of his agent duly authorized in writing.
 - (4) The period covered by the return.
 - (5) The amount of uncollectible rental charges subject to the lodging tax.
- (b) The operator may offset against the taxes payable, with respect to any reporting period, the amount of taxes imposed by this article previously paid as a result of any transaction the consideration for which became uncollectible during such reporting period, but only in proportion to the portion of such consideration which became uncollectible.

(Code 1985, § 6.12(5))

Sec. 42-26. Examination of return.

- (a) The city shall, after the return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed on the basis of such examination shall be the tax to be paid.
- (b) If the tax due is found to be greater than that paid, such excess shall be paid to the city ten days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return.
- (c) If the tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax to the city ten days after determination of such refund.

(Code 1985, § 6.12(6))

Sec. 42-27. Refunds.

- (a) Any person may apply to the city for a refund of taxes paid for a prescribed period in excess of the amount legally due for that period, provided that no application for refund shall be considered unless filed within one year after such tax was paid, or within one year from the filing of the return, whichever period is the longer.

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- (b) The city shall examine the claim and make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to such person at the address stated upon the return.
 - (c) If the claim is allowed in whole or in part, the city shall credit the amount of the allowance against any taxes due under this article from the claimant and the balance of said allowance, if any, shall be paid by the city to the claimant.

(Code 1985, § 6.12(7))

Sec. 42-28. Failure to file a return.

- (a) If any operator required by this article to file a return shall fail to do so within the time prescribed, or shall make, willfully or otherwise, an incorrect, false, or fraudulent return, the operator shall, upon written notice and demand, file such return or corrected return within five days of receipt of such written notice and shall at the same time pay any tax due on the basis thereof.
- (b) If such person shall fail to file such return or corrected return, the city shall make a return or corrected return, for such person from such knowledge and information as the city can obtain, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable period covered by such return) shall be paid upon within five days of the receipt of written notice and demand for such payment. Any such return or assessment made by the city shall be prima facie correct and valid, and such person shall have the burden of establishing its incorrectness or invalidity in any action or proceedings in respect thereto.
- (c) If any portion of a tax imposed by this article, including penalties thereon, is not paid within 30 days after it is required to be paid, the prosecuting attorney for the city may institute such legal action as may be necessary to recover the amount due plus interest, penalties, the costs and disbursements of any action.
- (d) Upon a showing of good cause, the city may grant an operator one 30-day extension of time within which to file a return and make payment of taxes as required by this article, provided that interest during such period of extension shall be added to the taxes due at the rate of ten percent per annum.

(Code 1985, § 6.12(8))

Sec. 42-29. Penalties.

If any tax imposed by this article is not paid within the time required by this article, there shall be added thereto a penalty equal to ten percent of the amount remaining unpaid. The amount of the tax not timely paid, together with any penalty provided by this article, shall accrue interest at the rate of eight percent per annum from the time such tax should have been paid. Any interest and penalty shall be added to the tax and collected as part thereof.

(Code 1985, § 6.12(9))

Sec. 42-30. Use of proceeds.

From the total tax collected, 95 percent of the proceeds shall be used in accordance with the M.S.A. § 469.190 and the tourism bureau agreement between the city and the Buffalo Chamber of Commerce, as both may be amended from time to time, to fund a local tourism bureau for the purpose of marketing and promoting the city as tourist destination. The remaining five percent shall be retained by the city to cover its administrative expenses.

(Code 1985, § 6.12(10))

Sec. 42-31. Appeals.

- (a) Any operator aggrieved by any notice, order or determination made by the city under this section may file a petition for review of such notice, order or determination detailing the operator's reason for contesting the notice, order or determination detailing the operator's reason for contesting the notice, order or determination. The petition shall contain the name of the petitioner, the petitioner's address and the location of the lodging subject to the order, notice or determination.
- (b) The petition for review shall be filled with the city clerk within ten days after the notice, or determination for which review is sought has been mailed or served upon the person requesting review. Upon receipt of the petition, the city clerk or the city clerk's designee, shall set a date for a hearing and give the petitioner at least five days' prior written notice of the date, time and place of the hearing.
- (c) At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order or determination shall be modified or withdrawn. The petitioner may be represented by counsel of the petitioner's choosing at the petitioner's own expense.
- (d) The hearing shall be conducted by the city council. The city council, in consultation with the city attorney, shall make written findings of fact and conclusions based upon the application sections of this section and the evidence presented. The city council may affirm, reverse or modify the notice, order or determination made by the city.

(Code 1985, § 6.12(11))

Sec. 42-32. Violation constitutes misdemeanor.

Any operator who willfully fails to make a return required by this article or who shall fail to pay the tax, penalty or interest imposed by this article, or after written demand for payment, or who shall refuse to permit the city to examine the books, records and papers under the operator's control, or who shall willfully make an incomplete, false or fraudulent return, shall be guilty of a misdemeanor.

(Code 1985, § 6.12(11))

Chapter 44 TOBACCO SALES, DISTRIBUTION AND USE

ARTICLE I. IN GENERAL

Sec. 44-1. Findings and purpose.

- (a) The city recognizes that many persons under the age of 21 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco related devices, and such sales, possession, and use are violations of state laws.
- (b) In addition, studies have shown that most smokers begin smoking before they have reached the age of 21 years and that those persons who reach the age of 21 years without having started smoking are significantly less likely to begin smoking.

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- (c) Smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government.
 - (d) This article is intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco related devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S.A. § 144.391.

(Code 1985, § 6.35.1(1))

Sec. 44-2. Definitions.

The following words and phrases when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires.

Compliance checks means the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco related devices are following and complying with the requirements of this article. Compliance checks may involve the use of minors as authorized by this chapter.

Electronic delivery device means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor from the product. The term "electronic delivery device" includes, but is not limited to, devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipe, vape pens, modes, tank systems, or under any other product name or descriptor. The term "electronic delivery device" includes any component part of a product, whether or not marketed or sold separately.

Individually packaged means the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this section shall not be considered individually packaged.

Juvenile petty offender means a person under the age of 21 years who commits a juvenile petty offense.

Juvenile petty offense includes any violation of this chapter or M.S.A. § 609.685(3) by a person under the age of 21 years.

Loosies means a single or individually packaged cigarette.

Minor means any natural person who has not yet reached the age of 21 years.

Moveable place of business means any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

Retail establishment means any place of business where tobacco, tobacco products, or tobacco related devices are available for sale to the general public. The term "retail establishment" includes, but is not limited to, grocery stores, convenience stores, and restaurants.

Sale means any transfer of goods for money, trade, barter, or other consideration.

Self-service merchandising means open displays of tobacco, tobacco products, or tobacco related devices in any way where any person shall have access to the product without the assistance or intervention of an employee of the premises maintaining the self-service merchandising. The term "self-service merchandising" does not include vending machines.

Tobacco or tobacco products means cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including, but not limited to, cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco.

Tobacco-related devices means cigarette papers or pipes for smoking or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of aerosol or vapor of tobacco or tobacco products. The term "tobacco-related devices" includes components of tobacco-related devices which may be marketed or sold separately.

Vending machine means any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco related device.

(Code 1985, §§ 6.35.1(2), 6.35.2(1))

Secs. 44-3—44-22. Reserved.

***ARTICLE II. BUSINESS LICENSING*³⁴**

Sec. 44-23. License required.

No person shall sell or offer to sell any tobacco, tobacco products, or tobacco-related devices or electronic delivery devices without first having obtained a license to do so from the city. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this article.

(Code 1985, § 6.35.1(3)(intro. ¶))

Sec. 44-24. Procedure.

- (a) *Application form and information.* An application for a license to sell tobacco, tobacco products, or tobacco-related devices shall be made on a form provided by the city. The application shall contain:
- (1) The full name of the applicant;
 - (2) The applicant's residential and business addresses and telephone numbers;
 - (3) The name of the business for which the license is sought; and
 - (4) Any additional information the city deems necessary.
- (b) *Administrator to review and submit to council.* Upon receipt of a completed application, the city administrator shall forward the application to the council for action at its next regularly scheduled council meeting. If the administrator shall determine that an application is incomplete, he shall return the application to the applicant with notice of the information necessary to make the application complete.

³⁴State law reference(s)—Authority for municipal regulation of the retail sale of tobacco and tobacco related products and devices, M.S.A. § 461.12.

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- (c) *Approval or denial by council; investigation.* The council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary.
 - (d) *Issuance by administrator.* If the council shall approve the license, the administrator shall issue the license to the applicant. If the council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the council's decision.
 - (e) *Term.* All licenses issued under this article shall be valid for one calendar year from the date of issue.
 - (f) *Revocation or suspension.* Any license issued under this article may be revoked or suspended upon a determination of a violation of this article.
 - (g) *Transfer.* All licenses issued under this article shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the council.
 - (h) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
 - (i) *Renewals.* The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but not more than 60 days before the expiration of the current license. The issuance of a license issued under this article shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.
 - (j) *Fees.* No license shall be issued under this article until the appropriate license fee shall be paid in full. The fee for a license under this article shall be as provided in the city fee schedule.

(Code 1985, § 6.35.1(3)(A)—(H), (4))

Sec. 44-25. Basis for denial of license.

The following may be grounds for denying the issuance or renewal of a license under this article, and if a license is mistakenly issued or renewed to a person, it may be revoked upon the discovery that the person was ineligible for the license under this section:

- (1) The applicant is under the age of 21 years.
- (2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, article provision, or other regulation relating to tobacco or tobacco products, or tobacco related devices.
- (3) The applicant has had a license to sell tobacco, tobacco products, tobacco related devices or electronic delivery devices revoked within the preceding 12 months of the date of application.
- (4) The applicant fails to provide any information required on the application or provides false or misleading information.
- (5) The applicant is prohibited by federal, state, or other local law, article, or other regulation, from holding such a license.

(Code 1985, § 6.35.1(5))

Secs. 44-26—44-53. Reserved.

ARTICLE III. SALES AND USE RESTRICTIONS

Sec. 44-54. Prohibited sales.

It shall be a violation of this article for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device or electronic delivery device:

- (1) To any person under the age of 21 years.
- (2) By means of any type of vending machine, except as may be otherwise provided in this article.
- (3) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the tobacco, tobacco product, tobacco-related device or electronic delivery device, except as may be otherwise provided in this article.
- (4) By means of loosies.
- (5) By any other means, or to any other person, prohibited by federal, state or other local law, article provision, or other regulation.

(Code 1985, § 6.35.1(6))

Sec. 44-55. Vending machines prohibited; exception.

It is unlawful for any person licensed under this chapter or article II of this chapter to allow the sale of tobacco, tobacco products, tobacco related devices or electronic delivery device by the means of a vending machine. This section does not apply to vending machines in facilities that cannot be entered at any time by persons under the age of 21 years.

(Code 1985, § 6.35.1(7))

State law reference(s)—Similar provisions, M.S.A. § 461.18.

Sec. 44-56. Self-service sales.

- (a) It is unlawful for a licensee under this chapter or article II of this chapter to allow the sale of tobacco, tobacco products, tobacco-related devices or electronic delivery devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee. All tobacco, tobacco products, tobacco-related devices and electronic delivery devices shall be stored behind a counter or other area not freely accessible to customers.
- (b) This section shall not apply to retail stores that have an entrance door opening directly to the outside and that derive at least 90 percent of their gross revenue from the sale of tobacco, tobacco-related devices, and electronic delivery devices and where the retailer ensures that no person under the age of 21 years is present, or permitted to enter, at any time.

(Code 1985, § 6.35.1(8))

State law reference(s)—Similar provisions, M.S.A. § 461.18.

Sec. 44-57. Licensees responsible for acts of employees.

All licensees under this chapter or article II of this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco-related devices or electronic delivery

devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder for purposes of determining an issuance, denial or revocation of a license.

(Code 1985, § 6.35.1(9))

Sec. 44-58. Compliance checks and inspections.

- (a) All licensed premises shall be open to inspection by an authorized city official during regular business hours.
- (b) The city shall conduct unannounced compliance checks at least once each calendar year at each location where tobacco is sold by engaging, with the written consent of their parents or guardians, minors over the age of 17 years but less than 21 years, to enter the licensed premises to attempt to purchase tobacco, tobacco products, tobacco-related devices or electronic delivery devices.
- (c) Minors used for compliance checks shall be trained and supervised by designated city personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products, tobacco-related devices or electronic delivery devices when such items are obtained or attempted to be obtained as part of the compliance check.
- (d) No minor used in compliance checks shall attempt to use false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his employee and shall produce any identification, if any exists, for which he is asked.
- (e) Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.

(Code 1985, § 6.35.1(10))

State law reference(s)—Similar provisions, M.S.A. § 461.12.

Sec. 44-59. Prohibited acts by minors.

- (a) *Illegal possession.* It is unlawful for any minor to have in his possession any tobacco, tobacco product, tobacco-related device or electronic delivery devices. This subsection shall not apply to minors lawfully involved in a compliance check.
- (b) *Illegal use.* It is unlawful for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, tobacco-related device or electronic delivery devices.
- (c) *Illegal procurement.* It is unlawful for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device or electronic delivery devices, and it shall be a violation of this article for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain for use any tobacco, tobacco product, tobacco-related device, or electronic delivery devices. This subsection shall not apply to minors lawfully involved in a compliance check.
- (d) *Use of false identification.* It is unlawful for any minor to attempt to disguise his true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

(Code 1985, § 6.35.1(11))

Sec. 44-60. Enforcement procedure.

- (a) *Notice.* Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his rights to be heard on the accusation.
- (b) *Hearings.* If a person accused of violating this article requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.
- (c) *Hearing panel.* The city council shall appoint a hearing officer to handle any requested hearings under this section.
- (d) *Decision.* If the hearing officer determines that a violation of this article did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under this article, shall be recorded in writing and a copy provided to the accused violator. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, these findings shall be recorded in writing and a copy provided to the accused violator.
- (e) *Appeals.* Appeals of any decision of the city council under this article shall be filed in the county district court.

(Code 1985, § 6.35.1(12))

Sec. 44-61. Administrative penalties.

- (a) *Licensees.* Any licensee found to have violated this article, or whose employees shall have violated this article, shall be charged an administrative fine of \$75.00 for a first violation, \$200.00 for a second violation at the same licensed premises within a 24-month period, and \$250.00 for a third or subsequent violation at the same location within a 24-month period. In addition, with a third or subsequent offense, the license shall be suspended for not less than seven days.
- (b) *Other individuals.* Other individuals, except minors, found to be in violation of this article shall be charged an administrative fine of \$75.00 for a first violation and \$200.00 for a second violation within a 24-month period.
- (c) *Minors.* Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco products, tobacco-related devices or electronic delivery devices may be charged an administrative fine of \$75.00 and be required to attend an appropriate tobacco education or tobacco cessation program from an approved source. The city may notify the minor's school and parent or legal guardian of the violation. The cost of the program shall be the responsibility of the minor attending the program.
- (d) *Misdemeanor.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor or as a petty misdemeanor for any violation of this article, as provided in section 44-63.

(Code 1985, § 6.35.1(13))

Sec. 44-62. Exceptions and defenses.

Notwithstanding the provisions of this article, an Indian may furnish tobacco to an Indian under the age of 21 years if the tobacco is furnished as a part of a traditional Indian spiritual or cultural ceremony. For the purposes of this section, an Indian is a person who is a member of an Indian tribe as defined by state statute. It shall be an affirmative defense to the violation of this article for a person to have reasonably relied on proof of age as described by state law.

(Code 1985, § 6.35.1(14))

State law reference(s)—Similar provisions, M.S.A. § 609.685.

Sec. 44-63. Alternative juvenile petty misdemeanor adjudication and penalties.

- (a) *Petty misdemeanor violations.* Whoever possesses, smokes, chews, or otherwise ingests, purchases, or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices and is under the age of 21 years is guilty of a petty misdemeanor. This subsection does not apply to a person under the age of 21 years who purchases or attempts to purchase tobacco or tobacco-related devices while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.
- (b) *Adjudication.* A juvenile petty offender who has committed a juvenile petty offense shall be adjudicated a "petty offender," and shall not be adjudicated delinquent, except pursuant to M.S.A. § 260.131 or other state juvenile laws.
- (c) *No right to counsel at public expense.* A child alleged to be a juvenile petty offender for violating this section or M.S.A. § 609.685(3) may be represented by counsel but does not have a right to appointment of a public defender or other counsel at public expense.
- (d) *Dispositions.* If the juvenile court finds that a child is a petty offender under this section, the court may:
 - (1) Require the child to pay a fine of up to \$200.00;
 - (2) Require the child to participate in a community service project;
 - (3) Require the child to participate in a drug awareness program;
 - (4) Place the child on probation for up to six months;
 - (5) Order the child to undergo a chemical dependency evaluation and if warranted by this evaluation, order participation by the child in an outpatient chemical dependency treatment program;
 - (6) Order the child to make restitution to the victim; or
 - (7) Perform any other activities or participate in any other outpatient treatment program deemed appropriate by the court.
- (e) *License and permit suspension.* In all cases where the juvenile court finds that a child has purchased or attempted to purchase tobacco, tobacco-related devices, or electronic delivery devices in violation of this section or M.S.A. § 609.695(3) if the child has a driver's license or permit to drive, and if the child used a driver's license, permit or state identification card to purchase or attempt to purchase tobacco, the court shall forward its finding in the case and the child's driver's license or permit to the commissioner of public safety. Upon receipt, the commissioner shall suspend the child's license or permit for a period of 90 days.
- (f) *Enhanced dispositions.* If the juvenile court finds that a child has committed a second or subsequent juvenile tobacco offense, the court may impose any of the following dispositional alternatives:
 - (1) The court may impose any of the dispositional alternatives described in subsection (d)(1) through (6) of this section.
 - (2) If the adjudicated petty offender has a driver's license or permit, the court may forward the license or permit to the commissioner of public safety. The commissioner shall revoke the petty offender's driver's license or permit until the offender reaches the age of 21 years or for a period of one year, whichever is longer.
 - (3) If the adjudicated petty offender has a driver's license or permit, the court may suspend the driver's license or permit for a period of up to 90 days but may allow the offender driving privileges as necessary to travel to and from work.

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- (g) *State juvenile laws.* The city does not intend this section to conflict with state juvenile laws, including M.S.A. § 260.195, and state law will govern any conflict.

(Code 1985, § 6.35.2(2)—(7))

Chapter 45 TETRAHYDROCANNABINOL (CANNABINOID) PRODUCTS

Sec. 45-1. Purpose and intent.

The purpose of this chapter is to regulate the possession and sale of any product that contains tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under M.S.A. § 151.72 ("THC Products") for the following reasons:

- (1) By enacting 2022 Session Law Chapter 98, Article 13, the Minnesota Legislature amended M.S.A. § 151.72 to allow the sale of certain products containing tetrahydrocannabinol ("THC").
- (2) Unlike the sale of alcohol, municipalities are not authorized to prohibit the sale of THC products within city limits.
- (3) The new law does not prohibit municipalities from adopting and enforcing local ordinance to regulate THC product businesses including, but not limited to, local zoning and land use requirements and business license requirements.
- (4) The National Academies of Science, Engineering, and Medicine note that the growing acceptance, accessibility, and use of THC products, including for medical purposes, have raised important public health concerns, while the lack of aggregated knowledge of cannabis-related health effects has led to uncertainty about the impact of its use.
- (5) The city recognizes the danger THC use presents to the health, welfare and safety of youth in Buffalo.
- (6) The Minnesota Legislature recognized the danger of THC product use among the public at large by setting potency and servicing size requirements.
- (7) The Minnesota Legislature recognized the danger of THC product use among youth by prohibiting the sale of any product containing THC to those under the age of 21, requiring that edible THC products be packaged without appeal to children and in child-resistant packaging or containers.
- (8) State law authorizes the board of pharmacy to adopt product and testing standards in part to curb the illegal sale and distribution of THC products and ensure the safety and compliance of commercially available THC products in the state of Minnesota.
- (9) The city has the opportunity to be proactive and make decisions that will mitigate this threat and reduce exposure of young people to the products or to the marketing of these products and improve compliance among THC product retailers with laws prohibiting the sale or marketing of THC products to youth.
- (10) A local regulatory system for THC product retailers is appropriate to ensure that retailers comply with THC product laws and business standards of the City of Buffalo to protect the health, safety and welfare of our youth and most vulnerable residents.
- (11) A requirement for a THC product retailer license will not unduly burden legitimate business activities of retailers who sell or distribute THC products to adults and will allow the City of Buffalo to regulate the operation of lawful businesses to discourage violations of state and local THC product-related laws.

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- (12) In making these findings and enacting this chapter, it is the intent of the Buffalo City Council to ensure responsible THC product retailing, allowing legal sale and access without promoting increases in use, and to discourage violations of THC product-related laws, especially those which prohibit or discourage the marketing, sale or distribution of THC products to youth under 21 years of age.

(Ord. No. 2023-5 , 3-20-2023)

Sec. 45-2. Definitions.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Compliance checks means the system the city uses to investigate and ensure that those authorized to sell cannabinoid products are following and complying with the requirements of state laws and this chapter. Compliance checks involve the use of persons under the age of 21 who purchase or attempt to purchase cannabinoid products. Compliance checks may also be conducted by the city or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to cannabinoid products.

Delivery sale means the sale of any cannabinoid products conducted by any means other than an in-person, over-the-counter sales transaction in a licensed retail establishment. Delivery sale includes, but is not limited to, sales conducted by: telephone or other voice transmission; mail or other written submission; website, mobile device application software, the internet; and/or door-to-door delivery service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.

Licensed product or THC product. Any product that contains more than trace amounts of tetrahydrocannabinol and that meets the requirements to be sold for human or animal consumption under M.S.A. § 151.72 as may be amended from time to time. Licensed product does not include medical cannabis as defined M.S.A. § 152.22, subd. 6, as may be amended from time to time.

Moveable place of business means any form of business that is operated out of a kiosk, tent, canopy, booth, pop-up stand, shipping container, or any other temporary shelter of any kind, or out of a truck, van, automobile, trailer, wagon, or other type of vehicle of any kind and not a fixed address storefront or other permanent type of structure authorized for sales transactions.

Operator means the person in legal possession and control of a location by reason of ownership, lease, contract or agreement, for the sale of cannabinoid products at retail.

Retail establishment means a fixed place of business where licensed products are available for sale to the general public, including but not limited to grocery stores, tobacco products shops, CBD stores, convenience stores, gasoline service stations, bars and restaurants.

Sale means any transfer of goods for money, trade, barter or other consideration.

Self-service merchandising means an open display of licensed products in any manner where any person has access to the licensed products without the assistance or intervention of the operator or operator's employee. Assistance or intervention means the actual physical exchange of the licensed product between the customer and the operator or employee.

Vending machine means any mechanical, electrical or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens, or other form of payment into or onto the device by the person seeking to purchase the licensed product.

(Ord. No. 2023-5 , 3-20-2023)

Sec. 45-3. Prohibited sales.

It shall be unlawful for any person to sell, transfer or otherwise distribute any THC product within the city:

- (1) Unless the sale is transacted by a person who holds, or is employed by a person who holds, a current retail THC product license;
- (2) Unless the sale is transacted in-person, at a licensed retail establishment;
- (3) If the sale involves any vending machine or self-service merchandising;
- (4) If the sale involves a delivery sale;
- (5) If the sale involves adulterated or misbranded THC products;
- (6) If the sale is to a person under the age of 21; and
- (7) If the sale violates any other law, order, ordinance, regulation, or statute.

(Ord. No. 2023-5 , 3-20-2023)

Sec. 45-4. Prohibited possession.

It shall be unlawful for any person under the age of 21 to possess THC products unless they are an employee of a licensee under this chapter, are at least 18 years of age and are possessing the THC product as part of their employment. It shall be unlawful for any person to procure for or provide THC products to any other person under the age of 21.

(Ord. No. 2023-5 , 3-20-2023)

Sec. 45-5. License required.

It will be unlawful for any person to sell at retail any THC products within the city without first having obtained a license to do so from the city.

(Ord. No. 2023-5 , 3-20-2023)

Sec. 45-6. Procurement of license.

- (a) An application for a license to sell or otherwise distribute licensed products shall be made on a form provided by the city and accompanied by an application fee as determined by the city council. The initial application shall include the investigation fee as determined by the city council. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. A business entity applicant shall provide a list of all persons that have an interest of five percent or more in the business. The list shall name all owners and show the interest held by each, either individually or beneficially for others. If the city clerk determines that an application is incomplete, it shall be returned to the applicant with notice of the information necessary to make the application complete.
- (b) The city shall conduct a background investigation on all new applications and applications to transfer a license. The investigation shall consider all facts and information bearing upon the question of the applicant's fitness to receive the license and to perform the duties imposed by this chapter, including but not limited to criminal history, regulatory compliance and financial investigation. The city may conduct a subsequent background investigation on an application for a renewal of a license if it is in the public interest to do so. In

that circumstance, the applicant will be required to submit an additional investigation fee. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this chapter. The city shall provide the person with a notice of revocation along with information on the right to appeal.

- (c) It is the duty of each business licensee to notify the city clerk in writing of any change in ownership in the business. Any change in the ownership or control of the business shall be deemed equivalent to a transfer of the license and any such license shall be removed 30 days after any such change in ownership or control unless the licensee has notified the city of the change by submitting a new license application for the new owners and the council has approved the transfer of the license.
- (d) Any time an additional investigation is required because of a change in ownership or control of a business, the licensee shall pay an additional investigation fee to be determined by the city. The city may at any reasonable time examine the transfer records and minute books of any business licensee to verify and identify the owners, or any other business's records to the extent necessary to disclose the interest which persons other than the licensee have in the licensed business. The council may revoke the license if the change in ownership or control of a licensee materially affects the integrity and character of the licensee.
- (e) Upon completing the investigation, the chief of police will report findings to the city council, together with recommendation as to the issuance or denial of a license to the applicant.
- (f) The city council may approve or deny the application for a license. If the city council approves an application, the city clerk shall issue and deliver the license to the applicant. If the city council denies the license, notice of denial shall be given to the applicant along with notice of applicant's right to appeal the city council's decision. Upon denial of any application for a license, the city shall refund the paid license fee but not the investigation fee, which is nonrefundable.
- (g) Each license shall be issued for a period of one year except that if the application is made during the license year, the license may be issued for the remainder of the year for a prorated fee, with any unexpired fraction of a month being counted as one month. Every license shall expire on December 31. Requests for renewal shall be made at least 30 days but no less than 60 days prior to expiration of the current license.
- (h) All licenses issued under this chapter shall be valid only on the premises for which the license is issued and only for the person or business to whom the license is issued. The transfer of any license to another location, business or person is prohibited.
- (i) A license issued under this chapter is a privilege and does not entitle the license holder to automatic renewal of the license. If the application is denied, the earliest an applicant may reapply is 12 months from the date the license is denied. Any license issued under this chapter may be suspended or revoked.
- (j) All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

(Ord. No. 2023-5 , 3-20-2023)

Sec. 45-7. Ineligibility and basis for denial of license.

- (a) *Ineligibility.*
 - (1) *Moveable place of business.* No license shall be issued to a moveable place of business. Only fixed location business shall be eligible for license under this chapter.
- (b) Grounds for denying the issuance or renewal of a license include, but are not limited to, the following:
 - (1) The applicant is under 21 years of age.
 - (2) The applicant is prohibited by federal, state or other local law, ordinance or regulation from holding a license.

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- (3) The applicant has been convicted within the past five years of any violation of federal, state, or local law, ordinance provision, or other regulation relating to cannabinoids products.
 - (4) The applicant has had a license to sell THC products suspended or revoked within 12 months preceding the date of application, or the applicant has or had an interest in another premises authorized to sell THC products, whether in the city or in another jurisdiction that has had a license to sell THC Products suspended or revoked in the same time period, provided that the applicant had an interest in the premises at the time of the violation that led to the revocation or suspension.
 - (5) The applicant fails to provide any of the information required on the licensing application or provides false or misleading information. A false statement on any application form shall cause an automatic refusal of the license, or if already issued, shall render any license issued thereto void and of no effect to protect the applicant from prosecution for a violation of this chapter.
 - (6) The applicant is a business that does not have an operating officer or manager who is eligible pursuant to the provisions of this section.
 - (7) The applicant for a license to sell THC products is not a retail establishment as defined in this chapter.
 - (8) The applicant is the spouse of a person ineligible for a license pursuant to the provisions of subsections (b)(2) or (3) of this section or who, in the judgment of the council, is not the real party in interest or beneficial owner of the business to be operated under the license.
 - (9) No license shall be granted or renewed for operation on any premises on which real estate taxes, assessments or other financial claims of the city are due, delinquent or unpaid.
- (c) *Transient businesses prohibited.* No license will be granted for any form of transient business. A transient business means:
- (1) Any movable place of business;
 - (2) Any business conducted from a permanent structure for a period of less than six consecutive months in a year.

(Ord. No. 2023-5 , 3-20-2023)

Sec. 45-8. Additional requirements.

- (a) All THC product testing must comply with the requirements set forth in M.S.A. § 151.72, subd. 4, as may be amended.
- (b) All THC product labeling and packaging must comply with the requirements set forth in M.S.A. § 151.72, subds. 5 and 5a, as may be amended from time to time, and must be prepackaged in packaging or a container that is child-resistant, tamper-evident, and opaque or placed in packaging or a container that is child-resistant, tamper-evident, and opaque at the final point of sale to a customer. The requirement that packaging be child-resistant does not apply to a THC product that is intended to be consumed as a beverage and which contains no more tetrahydrocannabinol than permitted under state law.
- (c) THC products must not contain more tetrahydrocannabinol in a single serving than allowed by state law. Edible cannabinoid products must not contain more tetrahydrocannabinol per package than allowed by state law.
- (d) No person under the age of 18 shall be permitted to handle transactions for the sale of THC products.

(Ord. No. 2023-5 , 3-20-2023)

Sec. 45-9. Prohibited distribution practices.

- (a) *Samples prohibited.* No person shall distribute samples of any THC product free of charge or at a nominal cost. No person shall distribute THC products as a free donation.
- (b) *Coupon and price promotion.* No person shall accept or redeem any coupon, price promotion, or other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any cannabinoid products to a consumer at no cost or at a price that is less than the non-discounted, standard price listed by a retailer on the item or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.
- (c) *No self-service displays.* All THC products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public. No person shall allow the sale of THC products in open displays that are accessible to the public without the intervention of a store employee.

(Ord. No. 2023-5 , 3-20-2023)

Sec. 45-10. Signage.

At each location where THC products are sold, the licensee shall display a sign in plain view to provide public notice that selling any of these products to any person under the age of 21 is illegal and subject to penalties. The notice shall be placed in a conspicuous location in the licensed establishment and shall be readily visible to any person who is purchasing or attempting to purchase these products.

(Ord. No. 2023-5 , 3-20-2023)

Sec. 45-11. Age verification.

At each location where THC products are sold, the licensee shall verify, by means of government-issued photographic identification containing the bearer's date of birth, that the purchaser or person attempting to make the purchase is at least 21 years of age.

(Ord. No. 2023-5 , 3-20-2023)

Sec. 45-12. Responsibility.

All operators and licensees are responsible for the actions of their employees regarding the sale, offer to sell, and furnishing of THC products on the licensed premises. The sale, offer to sell, or furnishing of any THC product by an employee shall be considered an act of the licensee and operator.

(Ord. No. 2023-5 , 3-20-2023)

Sec. 45-13. Compliance checks and inspections.

All licensed premises must be open to inspections by law enforcement or other authorized city officials during regular business hours, for compliance with this chapter and such other ordinances, rules, regulations, and laws relevant to the sale of cannabinoid products. From time to time, but at least once per year, the city shall conduct compliance checks.

No person used in compliance checks shall attempt to use false identification misrepresenting their age. All persons lawfully engaged in a compliance check shall answer all questions about their age asked by the licensee or

their employee, and shall produce any identification, if any exists, for which they are asked. The city will conduct a compliance check that involves the participation of a person at least 18 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase the licensed products. Persons used for the purpose of compliance checks shall be supervised by law enforcement.

(Ord. No. 2023-5 , 3-20-2023)

Sec. 45-14. Civil penalty, suspension or revocation of licenses.

- (a) The city council will follow the provisions of this section on the suspension, revocation or imposition of a civil penalty against any license granted under this chapter.
 - (1) *Notice of violation.* The chief of police will provide, in writing, to the licensee either personally or by mail, notice of any alleged violation of the provisions of this chapter or M.S.A. ch. 151, committed in the operation of the licensee's business and provide notice to the city council. If the city council determines from the facts and circumstances reported, together with any other facts and circumstances known to it, that the violation may warrant a civil penalty, suspension or revocation of the license held by the licensee, it will notify the licensee of their right to request a hearing prior to the imposition of the civil penalty or license suspension or revocation. The licensee must request a hearing within seven days of receipt of the notice. If requested, a hearing shall be scheduled before the city council sufficiently in advance to provide ten days written notice of the time, place and purpose of such hearing to the licensee.
 - (2) *Hearing on alleged violations.* At the time of the hearing, the licensee may appear and present any evidence which is material to the investigation. The city council will make and adopt findings of fact as to whether a violation of the provisions of this chapter or M.S.A. ch. 151 have been committed in the operation of the licensee's business and whether the violation was willful in nature. If the licensee has violated any of the provisions of this chapter or state law, the city council may impose a civil fine, suspend or revoke the license. If the violation is upheld, the person appealing shall be responsible for reimbursing the city up to \$500.00 of the city's actual expenses.
 - (3) *Mandatory revocation.* The council shall revoke the license or licenses of any licensee under this chapter if the licensee willfully violates any provisions of this chapter or M.S.A. ch. 151.

(Ord. No. 2023-5 , 3-20-2023)

Sec. 45-15. Penalties for violations.

- (a) *Administrative penalties—Individuals.* If a person who is not a licensee is found to have violated this chapter, the person shall be charged with an administrative penalty as follows:
 - (1) *First violation*—an administrative penalty not to exceed \$200.00.
 - (2) *Second violation within 12 months*—An administrative penalty not to exceed \$300.00.
 - (3) *Third violation within 12 months*—An administrative penalty not to exceed \$400.00.
- (b) *Administrative penalties—Licensee.* If a licensee or an employee of a licenses is found to have violated this chapter, the licensee shall be charged with an administrative penalty as follows:
 - (1) *First violation*—an administrative penalty of \$200.00 and suspend the license for not less than one day.
 - (2) *Second violation within 36 months*—An administrative penalty of \$500.00 and suspend the license for not less than three consecutive days.

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- (3) *Third violation within 36 months*—An administrative penalty of \$1,000.00 and suspend the license for not less than ten consecutive days.
- (4) *Fourth violation within 36 months*—The council shall revoke the license.
- (c) Any administrative penalty assessed against a licensee pursuant to this section must be paid in full within 30 days from receipt of written notification of the city council's imposition of the civil fine. Failure to pay the fine within that time period will result in a ten-day license suspension. Licensees whose licenses have been revoked may not be issued a new license within six months from the effective date of such revocation.
- (d) *Misdemeanor prosecution*. Violation of this chapter shall be a misdemeanor. Nothing in this section shall prohibit the city from pursuing prosecution of any violation in lieu of administrative penalties or in addition to license suspension or revocation. Each day that a person is in violation of the provisions of this chapter is a successive violation.
- (Ord. No. 2023-5 , 3-20-2023)

Sec. 45-16. Severability.

If any section or portion of any section of this chapter is deemed invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of other sections or portions of sections of this chapter.

(Ord. No. 2023-5 , 3-20-2023)

Chapter 46 TRAFFIC AND VEHICLES³⁵

ARTICLE I. IN GENERAL

Sec. 46-1. State law provisions adopted by reference.

To the extent applicable, the city adopts the provisions of M.S.A. ch. 169 (traffic regulations), M.S.A. §§ 171.02, 171.03, 171.08 and 171.24 (regarding driver licensing), and M.S.A. §§ 84.81 to 884.915 (snowmobiles) as though fully set forth in this section.

(Code 1985, § 8.01)

State law reference(s)—Authority for adoption by reference of state statutes or rules, M.S.A. § 471.62.

Sec. 46-2. Traffic signs, signals and markings.

- (a) *Council approval required*. No device, sign or signal shall be erected or maintained for traffic or parking control unless the council shall first have approved and directed the same, except as otherwise provided in this section, provided that when traffic and parking control is marked or signposted, such marking or signposting shall attest to council action thereon.

³⁵State law reference(s)—Traffic regulations generally, M.S.A. § 169.011 et seq.; local traffic regulation authority, M.S.A. § 169.04; snowmobiles, M.S.A. § 84.81 et seq.; all-terrain vehicles, M.S.A. § 84.92 et seq.

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- (b) *Compliance required.* It is unlawful for any person to park a vehicle, except an emergency vehicle, contrary to lane restrictions or prohibitions painted on any curb, or contrary to signposted, fenced, or barricaded restrictions or prohibitions. It is a misdemeanor for any person to drive a vehicle contrary to lane restrictions or prohibitions painted on any street, or contrary to signposted, fenced, or barricaded restrictions or prohibitions.
- (c) *Damaging or moving traffic control devices.* It is a misdemeanor for any person to deface, mar, damage, move, remove, or in any way tamper with any structure, work, material, equipment, tools, sign, signal, barricade, fence, painting or appurtenance in any street unless such person has written permission from the city or is an agent, employee or contractor for the city, or other authority having jurisdiction over a particular street, and acting within the authority or scope of a contract with the city or such other authority.

(Code 1985, § 7.04(1), (3)—(5))

State law reference(s)—Signs, signals and markings, M.S.A. § 169.06 et seq.

Sec. 46-3. Temporary traffic restrictions.

The city, acting through the police chief, may temporarily restrict traffic or parking for any private, public or experimental purpose. It is the duty of the police chief to so restrict traffic or parking when a hazardous condition arises or is observed.

(Code 1985, § 7.04(2))

Sec. 46-4. Obedience to police officers.

It is a misdemeanor for any person to willfully fail or refuse to comply with any lawful order or direction of any police or peace officer invested by law with authority to direct, control or regulate traffic.

(Code 1985, § 7.03(2))

Sec. 46-5. Left turns may be prohibited.

The police chief may, in his discretion, and with the consent of the council, prohibit left turns entirely, or during specified hours, at certain intersections. It is unlawful for any person to make a left turn at any intersection signposted prohibiting the same or make a left turn during the hours of such signposted prohibition.

(Code 1985, § 8.03)

Sec. 46-6. One-way streets.

The council may, by resolution, designate streets as one-way streets. It is a misdemeanor for any person to travel upon any one-way street in a direction opposite that designated when the same has been duly signposted.

(Code 1985, § 8.05)

Sec. 46-7. Exhibition driving prohibited.

- (a) It is prima facie evidence of exhibition driving when a motor vehicle stops, starts, accelerates, decelerates, or turns at an unnecessary rate of speed so as to cause tires to squeal, gears to grind, soil to be thrown, engine

backfire, fishtailing or skidding, or, as to two-wheeled or three-wheeled motor vehicles, the front wheel to lose contact with the ground or roadway surface.

- (b) It is a misdemeanor for any person to do any exhibition driving on any street, parking lot, or other public or private property, except when an emergency creates necessity for such operation to prevent injury to persons or damage to property, provided that this section shall not apply to driving on a racetrack.
- (c) For purposes of this section, the term "racetrack" means any track or premises whereon motorized vehicles, horses, dogs, or other animals or fowl legally compete in a race or timed contest for an audience, the members of which have directly or indirectly paid a consideration for admission.

(Code 1985, § 8.04)

Sec. 46-8. Unauthorized removal.

It is unlawful for any person to move a vehicle not owned by such person into any prohibited area or away from a curb such distance as is unlawful.

(Code 1985, § 9.04)

Sec. 46-9. Recreational motor vehicles.

- (a) Per M.S.A. § 84.90(6), operation of recreational motor vehicles is not permitted on any public roadway within the city limits. For purposes of this section, the term "recreational motor vehicle" means any self-propelled vehicle and any vehicle propelled or drawn by a self-propelled vehicle used for recreational purposes, including, but not limited to, trail bikes or other all-terrain vehicles, hovercraft, or motor vehicles licensed for highway operation which is being used for off-road recreational purposes. The term "recreational motor vehicle" does not include snowmobiles.
- (b) It is unlawful for any person to operate recreational motor vehicles:
 - (1) On private property unless the operator has been provided oral or written authority by the owner of the private property.
 - (2) On any lands, including school grounds, hospital grounds, cemeteries and golf courses, without lawful authority or permission of the owner or occupant.
 - (3) In any public park located within the city.

(Code 1985, § 8.20(2)(A), (E), (H))

Sec. 46-10. Snowmobiles.

- (a) To the extent applicable within the city, and except as otherwise specifically provided in this section, the city adopts the provisions of M.S.A. §§ 84.81—84.928 as though fully set forth in this section.
- (b) For purposes of this section, the term "snowmobile" means a self-propelled vehicle originally manufactured and designed for travel on snow or ice steered by skis or runners. The term "snowmobile" does not include all-terrain vehicles as defined in M.S.A. § 84.92, off-highway motorcycles as defined in M.S.A. § 84.787, off-road vehicles as defined in M.S.A. § 84.797, mini-trucks as defined in M.S.A. § 169.011, utility task vehicles described in M.S.A. § 169.045, or any other vehicle being operated off road, including recreational vehicles subject to section 46-9.

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- (c) Snowmobiles may be operated within the city in strict compliance with M.S.A. § 84.87 and the following restrictions:
- (1) Snowmobiles shall not be operated on sidewalks and shall be operated only on the right side of a roadway.
 - (2) Snowmobiles shall not be operated at a speed greater than 20 miles per hour on any street or alley.
 - (3) Snowmobiles within the city using city streets and alleys shall proceed on a direct route to and from a specific destination.
 - (4) Snowmobiles shall not be operated on the boulevard along the curb of any city street unless the operator has been provided oral or written authority by the city.

(Code 1985, § 8.20(1), (2)(B)—(D), (F), (G))

Sec. 46-11. Motorized golf cart use.

- (a) *Operation authorized by permit; exceptions.* Except as otherwise specifically provided in this section, operation of motorized golf carts is authorized on the roadways of all city streets only with a permit issued under this section and in strict compliance with the conditions set forth in this section.
- (b) *Disabled person permit.* Permits for the on-street operation of motorized golf carts shall be issued only to physically disabled persons as defined by statute. Application for a permit shall include the name and address of the applicant and such other information as may from time to time be required by the council. All permits shall expire annually on December 31 unless renewed. The fee for a permit shall be in the amount provided in the city fee schedule. Applications for initial or renewal permits shall be accompanied by a certificate signed by a physician stating that the applicant is capable of safely operating a motorized golf cart on the roadway of streets. Operation under a disabled person permit is subject to the conditions provided in this section.
- (c) *Special circumstance or event permit.* The police chief may authorize the issuance of or issue temporary permits for the operation of motorized golf carts for use in special circumstances or events, provided that the purpose for the permit is for a community event or emergency, the permit is issued for no more than three days, and the operator is a licensed driver. Operation under a special circumstance or event permit is subject to the conditions provided in this section.
- (d) *Conditions for operation.* It is unlawful for any person to operate a motorized golf cart on the roadway of a street unless:
- (1) The operator has in possession a valid, current and unrevoked disabled person or special event permit from the city.
 - (2) The operation is on a roadway which has not been designated as prohibited for such operation, except crossing at an intersection.
 - (3) The operation is during daylight hours between sunrise and sunset.
 - (4) The operation is not during inclement weather, or when visibility is impaired by weather, smoke, fog, or other conditions, or when there is insufficient light to clearly see persons or vehicles thereon at a distance of 500 feet.
 - (5) The motorized golf cart displays a slow-moving vehicle emblem, as described by statute, on the rear thereof.
 - (6) The motorized golf cart is equipped with rear view mirrors as required by statute for other vehicles.
 - (7) The operator has insurance coverage as provided by M.S.A. § 65B.48(5) for motorcycles.

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- (8) The operator observes all traffic laws, except such as cannot reasonably be applied to motorized golf carts.

(Code 1985, § 8.25)

Sec. 46-12. Violations and penalties.

Every person who violates this chapter shall, upon conviction thereof, be punished as follows:

- (1) When the provision violated declares violation to be a misdemeanor, he shall be punished as for a misdemeanor.
- (2) When the violation is committed in a manner or under circumstances so as to endanger or be likely to endanger any person or property, he shall be punished as for a misdemeanor.
- (3) When the violator stands convicted of violation of any provision of this chapter, exclusive of violations relating to the standing or parking of an unattended vehicle, within the immediately preceding 12-month period for the third or subsequent time, he shall be punished as for a misdemeanor.
- (4) As to any violations not constituting a misdemeanor under the provisions of this chapter, he shall be punished as for a petty misdemeanor.
- (5) As to any violation of a provision adopted by reference, he shall be punished as specified in such provision, so adopted.

(Code 1985, §§ 8.99, 9.99)

State law reference(s)—Penalties for violation of municipal traffic ordinances, M.S.A. § 169.022.

Secs. 46-13—46-42. Reserved.

ARTICLE II. STOPPING, STANDING AND PARKING³⁶

Sec. 46-43. Presumption.

As to any vehicle parking violation, when the driver thereof is not present, it shall be presumed that the owner parked the same, or that the driver was acting as the agent of the owner.

(Code 1985, § 9.01)

Sec. 46-44. Impounding and removing vehicles.

- (a) When any police officer finds a vehicle standing upon a street or city-owned parking lot in violation of any parking regulation, such officer is authorized to require the driver or other person in charge of such vehicle to remove the same to a position in compliance with this article.
- (b) When any police officer finds a vehicle unattended upon any street or city-owned parking lot in violation of any parking regulation, such officer is authorized to impound such unlawfully parked vehicle and to provide for the removal thereof and to remove the same to a convenient garage or other facility or place of safety,

³⁶State law reference(s)—Stopping, standing and parking regulations, M.S.A. § 169.32 et seq.

provided that if any charge shall be placed against such vehicle for cost of removal or storage, or both, by anyone called upon to assist therewith the same shall be paid prior to removal from such place of storage or safekeeping.

(Code 1985, § 9.13)

Sec. 46-45. General parking prohibitions.

- (a) It is unlawful for any person to stop, stand or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the specific directions of a police officer or traffic control device in any of the following places:
- (1) On a sidewalk.
 - (2) In front of a public or private driveway.
 - (3) Within an intersection.
 - (4) Within ten feet of a fire hydrant.
 - (5) On a crosswalk.
 - (6) Within 20 feet of a crosswalk at any intersection.
 - (7) In a signposted fire lane.
 - (8) Within 30 feet upon the approach to any flashing beacon, stop sign or traffic control signal located at the side of a roadway.
 - (9) Within 50 feet of the nearest rail of a railroad crossing.
 - (10) Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of the entrance when properly signposted.
 - (11) Alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic.
 - (12) On the roadway side of any vehicle stopped or parked at the edge or curb of a street.
 - (13) Upon any bridge or other elevated structure upon a street.
 - (14) At any place where official signs prohibit or restrict stopping, parking or both.
 - (15) In any alley, except for loading or unloading and then only so long as reasonably necessary for such loading and unloading to or from adjacent premises.
 - (16) On any boulevard which has been curbed.
 - (17) On any public street in any manner that potentially interferes with the delivery of U.S. mail to a private residence.
- (b) A person may not be issued a citation for a violation of subsection (a)(17) of this section unless they have first been warned and made aware of the potential interference, and unless the parking occurs at a time that could potentially interfere with mail delivery service.

(Code 1985, § 9.02)

Sec. 46-46. Stopping or parking when directed by police officer to proceed.

It is unlawful for any person to stop or park a vehicle on a street when directed or ordered to proceed by any police officer invested by law with authority to direct, control or regulate traffic.

(Code 1985, § 9.05)

Sec. 46-47. Parallel parking.

Except where angle parking is specifically allowed and indicated by curb marking or signposting, or both, each vehicle stopped or parked upon a two-way road where there is an adjacent curb shall be stopped or parked with the right-hand wheels of the vehicle parallel with, and within 12 inches of, the right-hand curb, and, where painted markings appear on the curb or the street, such vehicle shall be within such markings, front and rear, provided that upon a one-way roadway all vehicles shall be so parked, except that the left-hand wheels of the vehicle may be parallel with and within 12 inches from the left-hand curb, but the front of the vehicle in any event and with respect to the remainder of the vehicle, shall be in the direction of the flow of traffic upon such one-way street. It is unlawful to park in violation of this section.

(Code 1985, § 9.06)

Sec. 46-48. Angle parking.

Where angle parking has been established by council resolution, and is allowed, as shown by curb marking or signposting, or both, each vehicle stopped or parked shall be at an angle of approximately 45 to 60 degrees with the front wheel touching the curb and within any parking lines painted on the curb or street, provided that the front wheel not touching the curb shall be the portion of the vehicle furthest in the direction of one-way traffic. It is unlawful to park in violation of this section.

(Code 1985, § 9.07)

Sec. 46-49. Parking on streets without curb.

Upon streets not having a curb, each vehicle shall be stopped or parked parallel and to the right of the paving, improved or main traveled part of the street. It is unlawful to park in violation of this section.

(Code 1985, § 9.08)

Sec. 46-50. Continuous on-street parking time restricted.

- (a) It is unlawful for any person to stop, park or leave standing any vehicle upon any street for a continuous period in excess of 24 hours.
- (b) The police chief may, when authorized by resolution of the council, designate certain streets, blocks or portions of streets or blocks as prohibited parking zones, or five-minute, ten-minute, 15-minute, 30-minute, one-hour, two-hour, four-hour, six-hour, eight-hour, morning or afternoon rush hour limited parking zones and shall mark by appropriate signs any zones so established. Such zones shall be established whenever necessary for the convenience of the public or to minimize traffic hazards and preserve a free flow of traffic.
- (c) It is unlawful for any person to stop, park or leave standing any vehicle in a prohibited parking zone, for a period of time in excess of the signposted limitation, or during signposted hours of prohibited parking.

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- (d) It is unlawful for any person to remove, erase or otherwise obliterate any mark or sign placed upon a tire or other part of a vehicle by a police officer for the purpose of measuring the length of time such vehicle has been parked.
 - (e) For the purpose of enforcement of this section, any vehicle moved less than one block in a limited time parking zone shall be deemed to have remained stationary.

(Code 1985, § 9.09)

Sec. 46-51. Parking during snow removal.

- (a) Following any snowfall between the dates of November 1 of each year to April 1 of the next year, it shall be unlawful to park or leave standing any vehicle on any street from 2:00 a.m. until such time as snow plowing curb-to-curb has been completed on such street, or as outlined in subsection (b) of this section.
- (b) In the event of a continuous or substantial snowfall, as determined by the city administrator, a citywide snow emergency may be declared. It shall be unlawful to park on any city street during the time in which a snow emergency has been declared, until such time as the snow emergency is rescinded.

(Code 1985, § 9.10)

Sec. 46-52. Loading zones.

The council may, by resolution, establish loading zones to be used for the specific purpose of loading or unloading merchandise from a commercial vehicle or vehicle temporarily being utilized in the transport of merchandise. Such loading zones shall be installed by order of the city where in the judgment of the council a commercial loading zone is justified, and duly signposted.

(Code 1985, § 9.14)

Sec. 46-53. Unattended vehicle.

It is unlawful for any person to leave a motor vehicle unattended and unlocked while the engine is running on any street or private or public parking lot. It is unlawful for any person to leave a motor vehicle unattended and unlocked with the key in the ignition on any street or private or public parking lot.

(Code 1985, § 9.15)

Sec. 46-54. Vehicle repair on streets and city-owned parking lots.

It is unlawful for any person to service, repair, assemble or dismantle any vehicle parked upon a street or city-owned parking lot, or attempt to do so, except to service such vehicle with gasoline or oil or to provide emergency repairs thereon, but in no event for more than 24 hours.

(Code 1985, § 9.16)

Sec. 46-55. Parking for physically disabled persons.

- (a) Statutory parking privileges for physically disabled persons shall be strictly observed and enforced. Police officers are authorized to tag vehicles on either private or public property in violation of such statutory privileges. It is unlawful for any person, whether or not physically disabled, to stop, park, or leave standing, a

motor vehicle in a signposted fire lane at any time or in lanes where, and during such hours as, parking is prohibited to accommodate heavy traffic during morning and afternoon rush hours.

- (b) All parking spaces for physically disabled persons shall be marked in the manner provided by statute. It is unlawful for the owner or manager of property on which a designated parking space is reserved for parking for physically disabled persons to permit obstruction or parking by a non-physically disabled person in such space.

(Code 1985, §§ 9.17, 10.35)

Sec. 46-56. Parking on private property without consent.

It is a misdemeanor to park or abandon a motor vehicle on the property of another, or upon an area developed as an off-street parking facility, without the consent of the owner, lessee or person in charge of any such property or facility.

(Code 1985, § 9.18)

Sec. 46-57. Recreational camping vehicle parking.

It is unlawful for any person to leave or park a recreational camping vehicle on or within the limits of any street or right-of-way for a continuous period in excess of 24 hours, except where signs are erected designating the place as a campsite or in a mobile home park; provided, however, that during such 24-hour period, such vehicle shall not be occupied as living quarters. For purposes of this section, the term "recreational camping vehicle" includes the following:

- (1) *Travel trailer*, which is a vehicular, portable structures built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently identified "travel trailer" by the manufacturer of the trailer.
- (2) *Pickup coach*, which is a structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.
- (3) *Motor home*, which is a portable, temporary building to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.
- (4) *Camping trailer*, which is a folding structure, mounted on wheels and designed for travel, recreation and vacation uses.

(Code 1985, § 9.03)

Sec. 46-58. Truck parking.

- (a) It is unlawful to park a detached semi-trailer upon any street, city-owned parking lot, or other public property except such as are specifically designated by the council by resolution and signposted.
- (b) It is unlawful to park a truck (other than a truck of 12,000 pounds gross vehicle weight, or less), truck-trailer, tractor-trailer or truck-tractor within an area zoned as a residential district except for the purpose of loading or unloading the same, and then only during such time as is reasonably necessary for such activity.
- (c) It is unlawful to park a commercial vehicle of more than 12,000 pounds gross vehicle weight upon any street in the business district except streets as specifically designated by the council by resolution and signposted, but parking of such vehicle for a period of not more than 20 minutes shall be permitted in such space for the purpose of necessary access to abutting property while actively loading or unloading when such access

cannot reasonably be secured from an alley or from an adjacent street where truck parking is not so restricted.

- (d) It is unlawful to park a truck or other vehicle using or equipped with a trailer, or extended body or other extension or projection beyond the original length of such vehicle, or any passenger bus, diagonally along any street except for a time sufficient to load or unload, and in such case, only parallel parking shall be permitted; provided, however, that a truck may stand backed up to the curb if the weight or bulk of the load makes parallel parking impracticable, but then only for a period of time sufficient to load or unload.
- (e) Parking of commercial vehicles is permitted in duly designated and signposted loading zones, and in alleys, for a period of up to 20 minutes, provided that such alley parking does not prevent the flow of traffic therein, all of which shall be for the purpose of access to abutting or adjacent property while actively loading or unloading.

(Code 1985, § 9.11)

Sec. 46-59. Parking in city parking lots and ramps.

- (a) *Definitions* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Merchandise means and includes, but is not limited to, real goods and personal services such as bicycles, lawn mowers or implements of husbandry.

Motor vehicle means every vehicle which is self-propelled, to include, but not be limited to, all makes and models of trucks and cars, motorcycles, snowmobiles, personal watercraft and all-terrain vehicles.

- (b) *City may limit size and type of vehicles permitted.* In city-owned parking lots and ramps, the council may limit the sizes and types of motor vehicles to be parked thereon, hours of parking, and prescribed method of parking, provided that such limitations and restrictions are marked or signposted thereon.
- (c) *Driving against travel directional markings prohibited.* It is unlawful to drive in a direction opposite the flow of traffic marked by one-way signs or arrows, or to park any vehicle in any city-owned parking lot or ramp contrary to the restrictions or limitations marked or signposted therein.
- (d) *Sale or display of merchandise prohibited.* It is unlawful to park or place any motor vehicle used for the purposes of peddling merchandise or to park or place merchandise for the purpose of displaying it for sale, transfer or disposal in municipal parking lots; provided, however, that sale of merchandise may be made from municipal parking lots with the specific approval from the city administrator for purposes of the Annual Buffalo Days Event and the Annual Arts and Crafts Fair or other community wide sponsored events that relate to tourism or economic development.
- (e) *Residential parking by permit.* Persons residing in rental units within the city's Central Business District (CBD) who lack sufficient off-street vehicle parking at the location of their rental unit, may apply for and be granted a permit to park in a specifically designated parking lot within the CBD, subject to the following:
 - (1) Permits are to be issued by the city by application on an approved form, at a cost to be set by the city council.
 - (2) Permits are valid for one calendar year and must display a permit number, and a number designating which parking lot within the CBD they are authorized to park in. Vehicles displaying a valid parking permit are subject to all applicable laws and ordinances related to parking, except that a properly permitted vehicle may be left parked continuously within the parking lot designated on the permit within the CBD for a period not to exceed 14 days.

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- (3) No other special privileges or exemptions are granted to a person displaying a parking permit of this nature other than those specified within this subsection.

(Code 1985, § 9.12)

Secs. 46-60—46-79. Reserved.

ARTICLE III. VEHICLE RESTRICTIONS

Sec. 46-80. Restrictions upon use of streets by certain vehicles.

- (a) The city with respect to highways under their jurisdiction, may prohibit the operation of trucks or other commercial vehicles, or may impose limitations as to the weight thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.
- (b) Prohibited operation of trucks and other commercial vehicles.
- (1) Except as otherwise permitted in subsection (2) below, no person shall operate a commercial vehicle exceeding 10,000 pounds gross vehicle weight upon any city streets listed in subsection (d).
- (2) This section does not apply to:
- a. Vehicles operated on the prohibited street for the purpose of delivering or picking up materials or merchandise or people within the restricted street segment. Such vehicles must enter the prohibited street at the intersection nearest the destination of the vehicle and proceeding thereon no farther than the nearest intersection thereafter.
 - b. Any vehicle owned by a public utility while in use to construct, install, maintain or repair any public utility.
 - c. Government vehicles.
- (3) The violation of this section is a petty offense punishable by a fine of \$100.00.
- (c) Erection of signs designating prohibitions.
- (1) The city shall cause necessary signs to be posted along the streets designated in subsection (d) below informing the general public of the truck restrictions. When signs are erected giving notice of such restrictions, any person failing to comply with the notice shall be deemed guilty of a petty offense.
- (d) Restricted streets.
- (1) Pulaski Road, from 3rd Avenue Northeast to Calder Avenue.

(Ord. No. 2022-1 , 1-18-2022)

State law reference(s)—M.S.A. § 169.87

Chapter 48 UTILITIES³⁷

³⁷State law reference(s)—Municipally owned utilities, M.S.A. § 412.231 et seq.; municipal ownership of utilities, M.S.A. § 452.08 et seq.; local improvements and special assessments, M.S.A. § 429.011 et seq.; municipal

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water pollution control, M.S.A. § 115.41 et seq.; municipal waterworks, storm and sanitary sewer systems,
M.S.A. § 444.075.

ARTICLE I. IN GENERAL

Sec. 48-1. Definitions.

The following words and phrases when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires.

Administrative authority means the state health commissioner due to the city's adoption of state plumbing regulations.

City utility means any city-owned utility system, including, but not by way of limitation, water, sewage, Internet, and electric service.

Company, grantee, and franchisee mean any public utility system to which a franchise has been granted by the city.

Consumer and customer mean any user of a city utility.

Cross connection means any connection or arrangement, physical or otherwise, between the water utility supply system and any private well, plumbing fixture, or tank, receptacle, equipment, or device for which it may be possible for nonpotable, used, unclean, polluted, or contaminated water or other substance to enter any part of the potable water system under any condition.

Point of service means at the point where public utility services connect to private service lines at the customer location.

Readily accessible means capable of being reached safely and quickly for operation, repair, or inspection without requiring those to whom ready access is necessary to remove obstacles, panels, or similar objects.

Utility means all utility services, whether the same is public city-owned facilities or furnished by public utility companies.

(Code 1985, § 3.01)

Sec. 48-2. Violation a misdemeanor.

Violations of this chapter are misdemeanors, punishable as provided in section 1-11.

(Code 1985, § 3.99)

Sec. 48-3. Chapter is part of contract between city and franchisees and consumers.

Provisions of this chapter relating to city utilities shall constitute part of the contract between the city and all consumers of city utility services, and every such consumer shall be deemed to assent to the same. All contracts between franchisees and consumers of utility services other than the city shall be in strict accordance with the provisions of this chapter.

(Code 1985, § 3.04)

Sec. 48-4. Service outside the city.

The city may furnish city utility service to consumers outside the city provided that such consumers supply the city with necessary easements and other documentation, pay that portion of the cost of extending such lines as the council shall determine, and specifically agree to the terms of this chapter, including, but not limited to, rules, regulations and rates adopted thereunder and the right to specially assess delinquent services, charges and penalties.

(Code 1985, § 3.05(9))

Sec. 48-5. Electric interconnection and distribution generation.

A city utility customer seeking to connect a distributed generation (DG) facility to the distribution system must follow the city electric utility DER interconnection process. All costs of the interconnection shall be borne by the customer.

Sec. 48-6. Application for service; connection upon approval of city.

Application for city utility services shall be made upon forms supplied by the city and strictly in accordance therewith. No connection shall be made until consent has been received from the city to make the same.

(Code 1985, § 3.05(2))

Sec. 48-7. Discontinuance of service.

- (a) City utilities may be shut off or discontinued whenever it is found that:
- (1) The owner or occupant of the premises served, or any person working on any connection with the city utility systems, has violated any requirement of this Code relative thereto, or any connection therewith;
 - (2) Any charge for a city utility service, or any other financial obligation imposed on the present owner or occupant of the premises served, is unpaid after due notice thereof;
 - (3) There is fraud or misrepresentation by the owner or occupant in connection with any application for service or delivery or charges therefor;
 - (4) Due to high water, ice formation, or other natural phenomena, a situation arises which would cause imminent or impending danger of injury to the utility system, an individual property owner, or the public as a whole.
- (b) Reasonable notice of such cutoff will be given, if possible, but may be terminated forthwith if the city determines that an emergency exists.

(Code 1985, § 3.05(3))

Sec. 48-8. Ownership of city utilities.

Ownership of all city utilities, plants, lines, mains, extensions and appurtenances thereto, shall be and remain in the city, and no person shall own any part or portion thereof; provided, however, that private facilities and appurtenances constructed on private property are not intended to be included in city ownership.

(Code 1985, § 3.05(4))

Sec. 48-9. Right of and consent to entry.

By applying for, or receiving, a city utility service, a customer irrevocably consents and agrees that any city employee acting within the course and scope of his employment may enter into and upon the private property of the customer, including dwellings and other buildings, at all reasonable times under the circumstances, in or upon which private property a city utility, or connection therewith, is installed, for the purpose of inspecting, repairing, reading meters, connecting or disconnecting the city utility service.

(Code 1985, § 3.05(5))

Sec. 48-10. Underground utility construction preferred; exceptions.

- (a) *Generally.* The preferred method of construction for small utilities is underground installation. Any deviation from this preferred method must be approved before construction can commence. Unless otherwise specifically approved, all utility lines installed, constructed or otherwise placed within the city for electric, telephone, Internet, television cable or other like or similar services to serve residential, commercial and industrial customers in newly platted areas, and which utilize metallic conductors to carry electric current, whether owned, installed or constructed by the supplier, consumer or any party, shall be installed and placed underground, subject only to the exceptions provided herein.
- (b) *Section applicable both within and outside city limits.* The requirements of this section shall apply equally outside of the corporate limits of the city coincident with city jurisdiction of platting, subdivision regulation or comprehensive planning as may now or in the future be allowed by law. All companies installing and operating lines such as those described herein shall be referred to as "utility companies" for purposes of this section.
- (c) *Exceptions.* The following exceptions to the strict applicability of this section shall be allowed upon the conditions stated:
 - (1) *Meters, gauges, transformers, lighting, and service connection pedestals.* Aboveground placement, construction, modification or replacement of meters, gauges, transformers, street lighting and service connection pedestals shall be allowed.
 - (2) *Transmission lines.* Aboveground placement, construction, modification or replacement of those lines commonly referred to as "high voltage transmission lines" upon which the conductor's normal operating voltage equals or exceeds 23,000 volts (phase to phase) shall be allowed; provided, however, that 60 days prior to commencement of construction of such a project, the city shall be furnished notice of the proposed project and, upon request, the utility company involved shall furnish any relevant information regarding such project to the city. This subsection shall not be construed as waiving the requirements of any other ordinance or regulation of the city as the same may apply to any such proposed project.
 - (3) *Technical and economic feasibility.* Aboveground placement, construction, modification or replacement of lines shall be allowed in residential, commercial and industrial areas where the council, following consideration and recommendation by the planning commission, finds that:
 - a. Underground placement would place an undue financial burden upon the landowner or the utility company or deprive the landowner of the preservation and enjoyment of substantial property rights; or
 - b. Underground placement is impractical or not technically feasible due to topographical, subsoil or other existing conditions which adversely affect underground utility placement.
 - (4) *Temporary service.* Aboveground placement of temporary service lines shall only be allowed:

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- a. During the new construction of any project for a period not to exceed 24 months;
 - b. During any emergency to safeguard lives or property within the city;
 - c. For a period of not more than seven months when soil conditions make excavation impractical.
- (d) *Repair and maintenance of existing installations.* Nothing in this section shall be construed to prevent repair, maintenance, replacement or modification of existing overhead utility lines.
- (e) *Developer responsibility.* All owners, platters or developers are responsible for complying with the requirements of this section, and prior to the final approval of any plat or development plan, shall submit to the planning commission written instruments from the appropriate utility companies showing that all necessary arrangements with the companies for installation of such utilities have been made.
- (f) *Placement.* All utility lines shall be placed within appropriate easements or dedicated public ways so as to cause minimum conflict with other underground services. Whenever feasible, all utilities shall be placed within the same trench. All utility companies shall submit annually to the building inspector current maps revealing locations of underground installations, whether such installations were installed prior to the effective date of the ordinance from which this section is derived or hereafter.

(Code 1985, § 4.20)

Sec. 48-11. Tampering with utilities; prohibited acts.

- (a) It is unlawful for any person to willfully or carelessly break, injure, mar, deface, disturb, or in any way interfere with any buildings, attachments, machinery, apparatus, equipment, fixture, or appurtenance of any city utility or city utility system, or commit any act tending to obstruct or impair the use of any city utility.
- (b) It is unlawful for any person to make any connection with, opening into, use, or alter in any way any city utility system without first having applied for and received written permission to do so from the city.
- (c) It is unlawful for any person to turn on or connect a utility when the same has been turned off or disconnected by the city for nonpayment of a bill, or for any other reason, without first having obtained a permit to do so from the city.
- (d) It is unlawful for any person to jumper or by any means or device fully or partially circumvent a city utility meter, or to knowingly use or consume unmetered utilities or use the services of any utility system, the use of which the proper billing authorities have no knowledge.

(Code 1985, § 3.05(7))

Sec. 48-12. Private water and sewer mains and laterals.

- (a) *When permitted; connection standards.* If the city water system is not available, and after plan review by the city engineer, private water mains may be hooked up to the public systems. All systems must conform to all AWWA and the 10 States Standards promulgated by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers. All such systems will be the responsibility of the owners to maintain and repair.
- (b) *Extension into public rights-of-way.* The owners of any private water and sewer systems that extend into public right-of-way shall be responsible for any damage and or restoration of public right-of-way needed due to any material failure or routine maintenance of the system.
- (c) *Annual flushing of private mains and hydrants.* In the interest of public safety, private fire hydrants must receive periodic maintenance to ensure reliability and private water mains must be flushed at least on an

annual basis to ensure the health of the entire system that they are connected to. The city water department will accomplish these tasks and bill the owners or association according to the billable rates for personnel and equipment set by the city council. The city will not be liable to repair or replace any part of the private system that may suffer damage or failure during these maintenance activities. The owners or association may hire their own personnel or company, as approved by the water services department, to do this maintenance as long as they work with the full knowledge of department personnel and certify that the proper maintenance has been done.

- (d) *Maintenance of private systems.* The utility customer and/or customers are liable for any direct or indirect damage to the public utility and its other customers that may be caused by the maintenance activities of a private sewer or water system, including, but not limited to, maintenance of sewer and water main laterals, services, sprinkler systems, etc.

(Code 1985, § 3.41(2), (3), (5), (7))

Secs. 48-13—48-44. Reserved.

ARTICLE II. RATES, CHARGES AND BILLING

Sec. 48-45. Sewer and water availability charges.

- (a) Before connecting to the city water or sewer system, city sewer and water connection charges based on the number of units shall be paid. If, after the initial connection charges are paid, additional building permits or new sewer and water connections are made, the charges shall be recalculated and any additional charges shall be paid. The city connection charge per unit shall be established by council resolution. The number of units shall be computed as follows:
- (1) Single-family houses, mobile homes, townhouses, condominiums, duplex units, and apartments shall each comprise one unit per dwelling unit.
 - (2) Mobile homes shall each comprise 100 percent of a unit.
 - (3) Other buildings and structures shall be assigned one unit for each 15,000 gallons per quarter of water usage and sewage flow which it is estimated they will discharge, and commercial and industrial building units shall be assigned a minimum of one unit.
 - (4) Public housing units and housing units subsidized under any federal program for low- and moderate-income housing may be counted as 85 percent of the unit equivalent for that type of housing.
- (b) The connection charges shall be paid to the city before a building permit is issued unless other arrangements for the payment of the city unit are made and approved by the city. The council may approve the assessment of city connection charges on new or enlarged multiple residential, commercial or industrial buildings when the number of residential equivalent units is ten or more. The council may assess the city connection charge on any dwelling or building when the installation of the city utility system is made after the construction of the dwelling or building. The rate of interest shall be set by the council.
- (c) If the user fails to pay the connection charges when due, there shall be added to the charge an amount for interest at six-percent per annum plus one-half of one percent per month delinquency service charge for administrative expenses.
- (d) No permit shall be granted to tap or connect with sewer or water mains when any assessment or connection charge for such sewer or water main against the property to be connected is in default or delinquent. If such

assessment or connection charges are payable in installments, no permit shall be granted unless all installments then due and payable have been paid.

- (e) City connection charges shall be deposited in the utility fund.

(Code 1985, §§ 3.06, 3.70)

Sec. 48-46. Fixing rates and charges.

- (a) *City utilities.* All rates and charges for city utilities shall be as provided in the city fee schedule
- (b) *Public utility franchisees.* All rates and charges for public utility franchisees, not regulated by an agency of the state, shall be fixed and determined by the council and adopted by ordinance. Public utility company rates and charges may be fixed and determined by the respective franchisees in compliance with this section, as follows:
- (1) No rate or charge involving an increase thereof shall become effective until approved by the council. To request such increase, the franchisee shall prepare its written petition setting forth then current and proposed rates and charges, the effective date of the proposed increase (which may not be within ninety days of filing the petition), and the reason or reasons necessitating the proposed increase. Such petition shall be filed with the council by serving the same on the administrator in person or by certified mail, return receipt requested.
 - (2) Within 30 days of such filing, the council shall adopt a resolution and serve the same upon the resident superintendent of the franchisee in like manner as the petition may be served either approving the proposed increases or ordering a hearing thereon to be held within 60 days thereof. If no such action is taken by the council, such increase shall take effect on the date stated in the franchisee's petition as though approved by the council.
 - (3) Prior to the hearing date, the franchisee shall, without delay, comply with the city's reasonable requests for examination and copying of all books, records, documents and other information, relating to the subject matter of the petition. Should the franchisee unreasonably delay, fail or refuse such requests, the same shall be grounds for a continuance of the hearing date.
 - (4) Notice of hearing shall be in the form and manner stated in the resolution. At the hearing, all persons wishing to be heard thereon shall be afforded a reasonable opportunity. Findings and a decision shall be made by the council within 15 days after the hearing and served upon the franchisee.

(Code 1985, §§ 3.02, 3.03)

Sec. 48-47. Industrial and commercial wastewater rates.

Commercial and industrial wastewater users of over 250,000 gallons or more per quarter will be billed by one of the following methods for determining wastewater rates:

- (1) A minimum quarterly charge, whether use of water is metered or not.
- (2) Flat charge. Where the rate is not based upon the metered use of water, the city may establish quarterly flat charges. Such flat charges shall be made effective with the winter quarter of each year for each customer billing district. Flat charges may vary among the various classes of customers as established by the city establishing the rates and charges. In addition to flat rates, there may be a customer charge on each invoice as determined by the city and a certification charge.
- (3) Metered flow charges for all premises where the rate is to be based upon metered use of water.

(Code 1985, § 3.07)

Sec. 48-48. Billing, payment and delinquency; utility charges constitute lien on property served.

- (a) All city utilities shall be sold and delivered to consumers under then applicable rate applied to the amount of such utilities taken as metered or ascertained in connection with such rates.
- (b) All city utilities shall be billed monthly or quarterly and a utilities statement or statements shall be mailed to each consumer each month. All utilities charges shall be delinquent if they are unpaid at the close of business on the 15th day of each month following the billing, except that that if the 15th day falls on a Saturday, Sunday or legal holiday, the time shall be extended to the close of business on the next succeeding day on which business is normally transacted.
- (c) If service is suspended due to delinquency, it shall not be restored at that location until a reconnection charge has been paid for each utility reconnected in addition to amounts owed for service and penalties.
- (d) Payment for all city utility service and charges shall be the primary responsibility of the owner of the premises served and shall be billed to him unless otherwise contracted for and authorized in writing by the owner and the tenant, as agent for the owner, and consented to by the city. The city may collect the same in a civil action or, in the alternative and at the option of the city, as otherwise provided in this section.
- (e) Each such account is made a lien upon the premises served. All such accounts which are more than 45 days past due may, when authorized by resolution of the council, be certified by the administrator of the city, to the county auditor, and the administrator in so certifying shall specify the amount thereof, the description of the premises served, and the name of the owner thereof. The amount so certified shall be extended by the auditor on the tax rolls against such premises in the same manner as other taxes, and collected by the county treasurer, and paid to the city along with other taxes.

(Code 1985, § 3.05(1), (2), (8))

Secs. 48-49—48-69. Reserved.

ARTICLE III. ELECTRIC UTILITY

Sec. 48-70. City to designate service underground or overhead installation location and meter site.

New or changed service installations shall be made at the expense of the consumer, placed underground where designated by the city, and the meter location shall also be designated by the city. Overhead service installations may be permitted by the city in areas with existing overhead lines or with the approval of the utility.

(Code 1985, § 3.50(2))

Sec. 48-71. Construction standards and specifications; minimum requirements.

- (a) All wiring, connections and appurtenances shall be installed and performed strictly in accordance with the city's adopted electrical code. Failure to install or maintain the same in accordance therewith, or failure to

have or permit required inspections, shall, upon discovery by the city, be an additional ground for termination of electrical service to any consumer.

(b) All electrical installations shall comply with the following, where applicable:

- (1) The residential service shall include dwelling units used exclusively for residential purposes by or intended for single-family unit. Individual dwelling units in apartment buildings, condominiums, townhouses, cluster dwellings, etc., shall be classified as residential. A residential service rate shall be available to a single-family private residence as a single-phase service at a nominal voltage of 120 volts or 120/240 volts, furnished through one meter for domestic purpose only, including lighting, small domestic appliances, heating, refrigeration, cooling, and domestic power using single-phase motors five hp or less. A separate meter is required for each individual residence on multiple unit dwellings.
- (2) The commercial rate (CL) shall be available to any customer with less than 50 KW peak demand requirements, for general service at one location as 60 cycle, single-phase or three-phase service at the secondary voltage available at the customer's location. Individual metering is required on all multiple users within the same building or on the same electrical service. Reduced current starting is required on all motors of five HP or more.
- (3) The commercial w/demand (EI) rate shall apply to all users with any monthly peak demand of 50 KW or greater and new users with installed loads of 50 KW or greater. After any user not classified hereunder shall record a peak demand of 50 KW or greater for a three-month period, such user shall, commencing with the next billing period, be classified as a commercial w/demand user. Conversely, any commercial w/demand user recording less than 50 KW demand for a three-month period shall commencing with the next billing period, be classified as a commercial user (CL). A commercial w/demand rate shall be available to any customer at one location as 60 cycle, single-phase or three-phase service where available. Additional service options are available on a cost share bases. Individual metering is required on all multiple users within the same building or on the same electrical service. Reduced current starting is required on all motors of five HP or more.

(c) The city shall make an installation charge for extraordinary expenses required by a consumer.

(Code 1985, § 3.50(1), (3))

Sec. 48-72. Replacing overhead service or converting from overhead to underground installation.

- (a) The city may, at its option and at its expense, convert any present service where no change is otherwise required by the consumer, from overhead to underground. Where this is done, the city shall only cover and refill the trench and other ditching maintenance or repair, and all subsequent changing and repairing of the service shall be the obligation of the consumer. Nothing herein shall prevent the city from replacing an overhead service with the same type. Placement of services and meters shall be determined by the city.
- (b) Where overhead lines are converted to underground, property owners may be required to convert service components attached to their residence.

(Code 1985, § 3.50(4))

Sec. 48-73. City may adopt additional rules and regulations.

The council may, by resolution, adopt such additional rules and regulations relating to placement, size and type of equipment as it, in its discretion, deems necessary or desirable. Copies of such additional rules and regulations shall be kept on file in the office of the administrator, and uniformly enforced.

(Code 1985, § 3.50(5))

Secs. 48-74—48-104. Reserved.

ARTICLE IV. SEWER UTILITY

DIVISION 1. GENERALLY

Sec. 48-105. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Centigrade, expressed in parts per million by weight.

Chelating agents means any substance that will interfere with the treatment and removal of regulated contaminants including toxic or chelating agents.

Combined sewer means a sewer intended to serve as a sanitary sewer and a storm sewer, or as an industrial sewer and a storm sewer.

Debt service charge means the cost of debt service that is incurred by the city during construction of the wastewater plant. The term "debt service charge" includes interest and principal of capital costs to the city during plant and conveyance system construction of both grant eligible and non-grant eligible costs. The term "debt service charge" also includes cost of interim financing needed during plant construction.

Industrial waste means the liquid wastes resulting from the processes employed in industrial, manufacturing, trade or business establishments, as distinct from domestic wastes.

Normal domestic waste means liquid wastes from the noncommercial preparation, cooking and handling of food, or liquid wastes containing human excrement and similar matter from the sanitary conveniences of dwellings, commercial buildings, industrial facilities, and institutions.

Operation and maintenance cost means the cost of treating, conveyance, and collection of wastewater that will ensure the efficient operation and maintenance of the facility.

Pretreatment means application of physical, chemical and biological processes to reduce the amount of pollutants in or alter the nature of the pollutant properties in a wastewater prior to discharging such wastewater into the publicly owned wastewater treatment system.

Public sanitary sewer means and includes all city sewer mains, and intersecting sewers and structures by which domestic and industrial wastewater is collected, transported, treated and disposed of, provided that the term does not include plumbing inside or a part of a building or premises served, or service sewers from a building to the main.

Reinforced wipes means any wet or dry wipes reinforced with plastic fibers, commonly referred to as "flushable wipes."

Replacement cost means the cost of replacing those items of a certain design life as determined by the city engineer. The term "replacement cost" does not include regularly replaced parts such as nuts, bolts, etc.

Sanitary sewer means a sewer intended to carry only sanitary or sanitary and industrial wastewaters from residences, commercial buildings, industrial plants, and institutions.

Sewer service means private service lines from the public utility to the building or residence.

Sewer service charge means the total cost of operation and maintenance, and replacement, plus cost of debt service as passed on to users by sewer service charge.

Storm sewer means a sewer intended to carry only stormwaters, surface runoff, street wash waters, and drainage.

Total Kjeldahl Nitrogen (TKN) means the sum of nitrogen bound in organic substances, nitrogen in ammonia ($\text{NH}_3\text{-N}$) and in ammonium ($\text{NH}_4^+\text{-N}$) in the chemical analysis of wastewater expressed in parts per million.

Total suspended solids (TSS) means solid particles which do not precipitate out of solution or do not easily filter out measured under standard laboratory procedure expressed in parts per million by weight.

Toxic substances means any substance, chemical elements or compounds, phenols or other taste- or odor-producing substances, or any other substances which are not susceptible to treatment or which may interfere with the biological processes or efficiency of the treatment system, or that will pass through the system.

User charge means proportionate charges for the cost of operation and maintenance, replacement, conveyance, collection, and billing of wastewater to each user class based on class flow and waste characteristics.

User classes means user designations according to flow rate and discharge characteristics. The classes include the following:

- (1) *Class 1-Residential*. Class 1 includes single-family and multiple-family dwellings and religious institutions.
- (2) *Class 2-Institutional*. Class 2 includes hospitals, clinics and general units of local government.
- (3) *Class 3-Commercial*. Class 3 includes retail, wholesale, service, restaurants, hotels, motels, and other business establishments not engaged in the manufacture of a finished product or components of a finished product.
- (4) *Class 4-Industrial*. Class 4 includes anyone involved in the production of a finished or component product or the refining or mining of products or materials.
- (5) *Class 5-Significant user*. Class 5 includes anyone involved in the production of a finished product or component product or the refining or mining of products or materials or other users which:
 - a. Discharge 25,000 gallons per day or more of process wastewater;
 - b. Exceed 300 mg/L of BOD;
 - c. Exceed 300 mg/L of TSS;
 - d. Exceed 40 mg/L of TKN;
 - e. Exceed 10 mg/L of phosphorus;
 - f. Contribute a process wastewater containing five percent or more of the flow or load of any pollutant of concern to the city wastewater treatment plant;
 - g. Are designated as significant by the city on the basis that the users have reasonable potential to impact the public sanitary sewer system or violate required pretreatment standards;
 - h. Are designated as a significant industrial user in accordance with Minn. R. 7077.0105(41a).

(Code 1985, § 3.40(1))

Sec. 48-106. Connection required; private system prohibited; exception.

- (a) If a public sewer is accessible in a street or alley to a building or premises and the connection is feasible, liquid waste from any plumbing fixture in that building must be discharged into the public sewer unless otherwise prohibited by state or local code.
- (b) When assessments are paid, the city will supply a sewer service line to the property according to current federal, state, and local regulations. The service line shall be sized according to what may be allowed under the current zoning requirements for the lot or parcel.
- (c) If there are extraordinary costs involved with supplying this service beyond what is allowed in the assessments or the owner wants a larger service, the costs shall be the responsibility of the owner. It shall be the responsibility of the owner to extend the service line from the property line into the building or premises, after which the owner shall assume ownership and be responsible for all maintenance of the service line from the main to the building or premises.
 - (1) Where a pump, grinder station, or other similar mechanical device is needed to carry the sewer flows from the building or premise to the public sanitary sewer main, all such devices including electrical service, controls, and associated components for the operation of the device and piping from the main to the building or premise shall be considered part of the private sewer service and shall be owned and maintained by the property owner.
- (d) When replacing or upgrading an existing service line, and working in a public road right-of-way, hired contractors by owners are required to obtain a street opening permit. Included in the replacement of any private service, is the owner's responsibility and expense to reinstall any public road right-of-way (boulevard, sidewalk, curb, gutter, and street) to city specifications.
- (e) It is unlawful to construct, reconstruct or maintain any private sewage disposal system which is not in full compliance with the individual sewage treatment standards of the state pollution control agency. Sanitary sewer cooperatives, organized under M.S.A. ch. 308A or any other applicable law, shall not design, construct, install, own, manage, maintain, control or operate any individual sewage treatment systems (ISTS) or alternative discharging sewage systems (ADSS) within the city's corporate limits without the city's prior, written approval.

(Code 1985, §§ 3.41(1), 4.21(1); Ord. No. 2023-6 , § 1, 3-20-2023)

Sec. 48-107. Unmetered water prohibited; exceptions.

- (a) The city does not allow an unmetered water supply like a private well, industrial discharge or any other of water whose subsequent flow directly or indirectly discharges into the sanitary sewer system.
- (b) A meter shall be purchased through the utility and installed at the owner's expense. If, because of the nature of the water source of the water supply the city deems it impractical to meter the water on any premises the council may by resolution establish a flat charge per month in accordance with the estimated use of water on such premises.

(Code 1985, § 3.40(5))

Sec. 48-108. Metered water not discharged into city sewer system.

If a portion of the water to a customer is not directly or indirectly discharged into the sewer system, the quantity of such water shall be deducted in computing the sewer charge, provided a separate meter is installed and operated to register the quantity of water not discharged. The meter will be purchased through the city and

installed at the owner's expense. The owner shall provide documentation of a certified calibration of the meter to the city every 24 months.

(Code 1985, § 3.40(2))

Sec. 48-109. Sump pumps; rain spouts.

It is unlawful to discharge any roof water, groundwater or any other natural precipitation into the sewer system, or to connect any sump pumps or any other form of surface or subsurface water drainage to the sewerage system.

(Code 1985, § 3.40(4))

Sec. 48-110. Garage floor drains.

It is unlawful for a residential property to connect a floor drain located within a garage, shed, or other similar structure to the sanitary sewer system.

Sec. 48-111. Sizes, kind and depth of pipe.

The city may prescribe the size, kind and depth of sewerage service pipe and connections, which will be identified in the city standard specification manual. The minimum size, when placed underground shall be four inches in diameter.

(Code 1985, § 3.40(6))

Sec. 48-112. Cost recovery system for certain industrial users.

If an industrial user, pursuant to 40 CFR 35.905 begins discharging into the city's sewer system, an industrial cost recovery system will be developed according to the environmental protection agency rules and standards.

(Code 1985, § 3.40(8))

Sec. 48-113. Right to reject harmful discharges.

The city shall have the right to reject harmful wastes as determined by the administrative authority to be harmful to humans or animals or create a toxic effect in the receiving waters of the wastewater disposal system.

(Code 1985, § 3.40(9))

Sec. 48-114. Surcharges for excessive waste concentrations.

The city shall have the right to attach a surcharge onto the sewer use charge of a user that discharge greater than 300 mg/L of BOD, 300 mg/L of TSS, 40 mg/L of TKN or 10 mg/L of phosphorus. The surcharge shall be based on the rates listed in the city's fee schedule for significant users. Significant users may have different surcharge rates determined and included in the significant user agreement.

(Code 1985, § 3.40(10))

Sec. 48-115. City may require industrial pretreatment.

- (a) The city shall have the right to require industrial pretreatment when the city deems such pretreatment necessary to reduce the amount of pollutants, eliminate pollutants, or alternation of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the wastewater disposal system.
- (b) The owner shall provide, at owner's expense, such preliminary treatment as may be necessary to:
 - (1) Reduce the biochemical oxygen demand to 300 mg/L, the total suspended solids to 300 mg/L; the TKN to 40 mg/L and phosphorus to 10 mg/L;
 - (2) Reduce objectionable characteristics of constituents to within the maximum limits provided for in subsection (b)(1) of this section; or
 - (3) Control the quantities and rates of discharge of such waters or wastes.
- (c) Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for approval by the city and the state pollution control agency, and no construction of such facilities may be commenced until approvals are obtained in writing.
- (d) Maintenance of preliminary treatment facilities. Where preliminary treatment facilities are provided for waters or wastes, they shall be maintained continuously in satisfactory and effective operation, by the owner at the owner's expense.

(Code 1985, § 3.40(11))

Sec. 48-116. Unlawful discharges.

It is unlawful to discharge any of the following described wastes into the sewerage system:

- (1) Liquids having a temperature higher than 150 degrees Fahrenheit.
- (2) Waters or wastes, which contains more than 100 ppm, by weight, of fat, oil, or grease (FOG).
- (3) Gasoline, benzene, naphtha, fuel oil or other inflammable or explosive liquid, solid or gas.
- (4) Garbage, except such as has been properly shredded.
- (5) Ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, reinforced wipes, feathers, tar, plastics, wood, paunch manure, or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage works.
- (6) Waters or wastes having a pH lower than 5.5 or higher than 9.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.
- (7) Waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, which constitute a hazard to humans or animals, or create any hazard in the receiving waters of the sewage treatment plant.
- (8) Waters or wastes containing substances of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant.
- (9) Noxious or malodorous gases or substances capable of creating a public nuisance.

(Code 1985, § 3.40(3))

Sec. 48-117. City may prohibit certain toxic substances.

- (a) The city shall have the right to forbid certain toxic substances from entering the sewage treatment system. The list of following toxics shall be prohibited from being discharged into the city wastewater treatment system unless the environmental protection agency, the state pollution control agency, and the city deems them compatible with the treatment works operation. Discharges shall not exceed daily and monthly maximum concentrations as included in the state pollution control agency metal finishing pretreatment facility state disposal system general permit where applicable. If the pollutants are found not to be compatible, they shall be prohibited according to this section.

- (1) Acidity, alkalinity, ph.
- (2) Ammonia.
- (3) Alkali and alkaline earth metals.
- (4) Arsenic.
- (5) Borate (and other boron species).
- (6) Cadmium.
- (7) Chromium.
- (8) Copper.
- (9) Cyanide.
- (10) Iron.
- (11) Lead.
- (12) Manganese.
- (13) Mercury.
- (14) Nickel.
- (15) Silver.
- (16) Sulfate.
- (17) Sulfide.
- (18) Zinc.
- (19) Alcohols.
- (20) Phenols.
- (21) Chlorinated hydrocarbons.
- (22) Chloroform.
- (23) Carbon tetrachloride.
- (24) Methylene chloride.
- (25) Chlorobenzenes.
- (26) Miscellaneous chlorinated hydrocarbons.
- (27) Agricultural chemicals.

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- (28) Organic nitrogen compounds.
 - (29) Surfactants.
 - (30) Miscellaneous organic chemicals.
 - (31) Oil and grease.
 - (32) Chelating agents.
- (b) The list in subsection (a) of this section does not preclude the addition of other substances, which the EPA may add from time to time.
- (c) Where required by the city, the owner of any property serviced by a sanitary sewer shall provide protection from an accidental discharge of prohibited materials or other substances regulated by this section. Where necessary, facilities to prevent accidental discharges of prohibited materials shall be provided and maintained at the owner's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the city for review and approval prior to the construction of the facility. Review and approval of such plans and operating procedures shall not relieve any user from the responsibility to modify the user's facility as necessary to meet the requirements of this section. Users shall notify the city immediately upon having a slug or accidental discharge of substances in the wastewater in violation of this section to enable counter measures to be taken by the city to minimize damage to the wastewater treatment system. Such notification will not relieve any user of any liability for any expense, loss or damage to the wastewater treatment system or treatment process, or any fines imposed upon the city on account thereof under any state or federal law. Users shall insure that all employees who may cause or discover such a discharge are advised of the emergency notification procedure.
- (Code 1985, § 3.40(12))

Sec. 48-118. Wastewater discharge registration and permits.

- (a) *Mandatory wastewater registration.* All industrial and institutional users, as defined in section 48-105, proposing to connect or to commence a new discharge to the public sanitary sewer system shall obtain a wastewater registration with the city before connecting to or discharging into the public sanitary sewer system. All existing industrial and institutional users connected to or discharging into the public sanitary sewer system shall obtain a wastewater registration with the city within 180 days after the adoption date of the ordinance from which this chapter is derived. All registered users shall notify the city and update the registration information prior to making any modifications to their operations that would cause a change in wastewater chemistry or volume being discharged.
- (b) *Mandatory significant user permits.* All significant users, as defined in section 48-105, proposing to connect or to commence a new discharge to the public sanitary sewer system shall obtain a significant user permit before connecting to or discharging into the public sanitary sewer system. All existing significant users, as defined in section 48-105, connected to or discharging into the public sanitary sewer system shall obtain a significant user permit within 180 days after the effective date of the ordinance from which this chapter is derived.
- (c) *Registration and permit application.* Users required to obtain a registration or permit shall complete and file with the city an application in the form prescribed by the city. Existing users shall apply for the registration or permit within 30 days after the effective date of this chapter, and proposed new users shall apply at least 120 days prior to connecting or discharging to the public sanitary sewer system or concurrently with the submittal of any necessary building, land use, or zoning permit applications; whichever is sooner. The user is required to notify the city and subsequently apply for an amended registration or permit as a result of any changes in industrial process, chemicals used, volumes produced or wastewater volumes discharged as

prescribed in the registration or permit process. In support of the application, the user shall submit the information required by the city for the issuance of such a permit or registration.

Sec. 48-119. Control manholes.

- (a) Where required by the city, the owner of any property serviced by a building sewer carrying industrial wastes or a significant user shall install a suitable structure, or control manhole, with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of wastes. Such structure shall be accessible and safely located and shall be constructed in accordance with plans approved by the city. The structure shall be installed by the user at his expense and shall be maintained by the user to be safe and accessible at all times and in proper working condition, including flow calibrations as required by the city.
- (b) The owner of any property serviced by a building sewer carrying industrial wastes or a significant user may, at the discretion of the city, be required to provide laboratory measurements, tests, or analyses of waters or wastes to illustrate compliance with this section and any special condition for discharge established by the city or regulatory agencies having jurisdiction over the discharge. The number, type, and frequency of sampling and laboratory analyses to be performed by the user shall be as stipulated by the city. The user must supply a complete analysis of the constituents of the wastewater discharge to assure that compliance with federal, state, and local standards are being met. The user shall report the results of measurements and laboratory analyses to the city at such times and in such manner as prescribed by the city. The user shall bear the expense of all measurements, analyses, and reporting requirements by the city. As an alternative to the user completing the measurements, tests, and analyses, the city reserves the right to complete measurements, tests, and analyses at the sole discretion of the city. All costs shall be reimbursed to the city by the user.
- (c) All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this section shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association. Sampling methods, location, times, duration, and frequencies are to be determined on an individual basis subject to approval by the city.

(Code 1985, § 3.40(14))

Sec. 48-120. Oil and sand interceptors.

Oil and sand interceptors shall be provided when, in the opinion of the city, they are necessary for the proper handling of liquid wastes containing any flammable wastes, sand or other harmful ingredients or when required by state building code, or other state or federal requirements. All interceptors shall be of the type to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal of the captured materials by appropriate means and shall maintain a record of dates and means of disposal which are subject to review by the city. Any removal and hauling of the collected materials not performed by the owner's personnel must be performed by a currently licensed waste disposal firm.

Secs. 48-121—48-149. Reserved.

DIVISION 2. FATS, OILS AND GREASES (FOG)

Sec. 48-150. Impact of FOG on system.

Fats, oils and greases (FOG) reduce the capacity of the collection system over time by accumulating on the interior walls of the pipes. FOG increases the pollution load that must be treated at the publicly funded treatment facility. This increases the cost of treatment. The accumulation of FOG within the city piping system increases the chances of a sewer blockage and maintenance costs due to the need for extra cleaning and physical removal.

(Code 1985, § 3.40(16))

Sec. 48-151. Applicability.

Facilities meeting the criteria for this division include, but are not limited to:

- (1) Facilities preparing, processing, or serving food or food products.
- (2) Commercial food preparation establishments.
- (3) Restaurants, nursing homes, boardinghouses, hospitals school cafeterias, butcher shops.
- (4) Industrial food preparation or processing establishments.
- (5) Slaughterhouses.
- (6) Potato chip and fast-food preparation companies.
- (7) Frozen food manufacturers.

(Code 1985, § 3.40(16))

Sec. 48-152. Customer responsibility.

The customer is responsible for cleaning and maintaining the grease removal system located on his property and should maintain accurate records of the dates of cleaning and means of fat, oil or grease (FOG) disposal, subject to inspection and review by the water services department. If the utility department has determined that the collection system that conveys the customers wastewater from his service lines has experienced an excessive amount of required maintenance as a direct result of not maintaining their FOG removal devices, the city will directly bill the customer for any continued violation and excessive maintenance for time and materials at the current rates as established by the administrative authority.

(Code 1985, § 3.40(16))

Sec. 48-153. Licensed professional to perform work.

Any removal and hauling of fat, oil or grease must be performed by a licensed waste disposal or rendering firm. All costs incidental to the building sewer installation, connection and registration shall be borne by the customer.

(Code 1985, § 3.40(16))

Sec. 48-154. Grease removal systems required.

Grease removal systems shall be installed where the discharge of grease laden waste, from food preparation or food processing or other commercial establishment, into the sanitary sewer will cause an impediment or

obstruction of the sanitary sewer mains. An approved grease removal system shall be installed consisting of one or a combination of the following methods:

- (1) Passive technology, including an approved in-ground grease trap and an approved grease interceptor.
- (2) Active technology, including an approved grease recovery device and an approved solids transfer/grease recovery device.

(Code 1985, § 3.40(16))

Sec. 48-155. Prohibited discharge.

Waste that does not contain fat, grease, or oils and otherwise does not require treatment shall not discharge into the grease removal system. Wastewater from commercial dishwasher machines or wastewater that otherwise exceeds 150 degrees Fahrenheit shall not be introduced into any grease removal system.

(Code 1985, § 3.40(16))

Sec. 48-156. Food-waste grinders.

Food-waste grinders shall not discharge into the building drainage system through a grease interceptor, grease trap, or grease recovery device.

(Code 1985, § 3.40(16))

Sec. 48-157. Passive system requirements.

- (a) The plumbing/building inspector shall approve the size, type, and location of each grease trap. Grease interceptors shall be sized based upon the anticipated load or conditions of actual use, by an engineer or the manufacturer. Grease traps of pre-cast or poured in place concrete shall be constructed of sound durable material, not subject to excessive corrosion or decay, and shall be water and gas tight.
- (b) Grease interceptors shall be sized based upon the anticipated load or conditions of actual use, by an engineer or the manufacturer. Grease interceptors shall receive grease laden waste discharge from the major point sources. A floor drain shall not be considered a major point source.
- (c) Grease interceptors shall be equipped to control the rate of flow.

(Code 1985, § 3.40(16))

Sec. 48-158. Active system requirements.

- (a) Grease recovery devices shall be permitted in lieu of grease interceptors or grease traps in accordance with the requirements of this section.
- (b) Grease recovery devices shall receive all grease-laden waste discharge from the major point sources. A floor drain shall not be considered a major point source.
- (c) Grease recovery devices shall be sized based upon the anticipated load or conditions of actual use, by an engineer or the manufacturer.
- (d) Grease recovery devices shall have a minimum retention capacity indicated in the following table for the flow rates indicated:

Minimum Retention Capacity For Grease Recovery Devices

| | | | | | | | | | | |
|-----------------------------|---|----|----|----|----|----|----|----|-----|-----|
| Size symbol | 4 | 7 | 10 | 15 | 20 | 25 | 30 | 35 | 50 | 75 |
| Flow rate (gpm) | 4 | 7 | 10 | 15 | 20 | 25 | 30 | 35 | 50 | 75 |
| Retention capacity (pounds) | 8 | 14 | 20 | 30 | 40 | 50 | 60 | 70 | 100 | 150 |

Sec. 48-159. High risk facilities.

High risk facilities or facilities that have had previous field or surface effluent violations of more than 50 mg/L FOG shall incorporate a grease recovery device in combination with and preceding the grease trap.

(Code 1985, § 3.40(16))

Sec. 48-160. Alternate technology and methods.

Engineered alternative technology or methods shall be permitted, provided the technology or method meets the minimum performance standards set forth by the administrative authority and this article.

(Code 1985, § 3.40(16))

Sec. 48-161. Abandoned services.

Termination of sewer services to be abandoned and no longer used shall include the full removal of the service pipe within the public right-of-way or easement up to the sewer main. The cut-in-tee or wye in the sewer main shall be securely sealed with a watertight wrap around sleeve on the sewer main, as approved by the city.

(Code 1985, § 3.40(15))

Sec. 48-162. Violation of article.

- (a) Any person found to be violating any provision of this article shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
- (b) Any person who shall continue any violation beyond the time limit provided for in subsection (a) of this section shall be guilty of a petty misdemeanor. Each day in which such violation shall continue shall be deemed a separate offense. Such violator shall be liable to the city for any expense, loss or damage occasioned by reason of such violation.
- (c) The city shall have the right to enter upon the property of any sewer user, including, but not limited to, significant industrial users, for the purpose of inspecting, identifying any violations and enforcing this article or the specific terms of any significant industrial permit. This right shall include the right to take any abatement action necessary to protect the city's sanitary sewer utility.
- (d) Any person violating any of the provisions of this article or the terms of a significant industrial user permit shall become liable to the city for any expense, loss or damage incurred or occasioned by the city by reason of such violation, including reasonable attorneys fees.

(Ord. No. 2021-7 , § 1, 9-20-2021)

Secs. 48-163—48-190. Reserved.

DIVISION 3. ILLICIT DISCHARGES

Sec. 48-191. Statutory authorization.

This division is adopted pursuant to M.S.A. §§ 462.351 and 462.364 that grants cities necessary powers and a uniform procedure for city planning.

(Code 1985, § 3.61(1))

Sec. 48-192. Findings.

The city finds that illicit discharge adversely affects the public health, safety, and general welfare by impacting water quality and contributing to other environmental problems, creating nuisances, impairing other beneficial uses of environmental resources and hindering the ability of the city to provide adequate water, sewage, flood control, and other community services. In addition, extraordinary public expenditures may be required for the protection of persons and property in such areas and in areas that may be affected by unplanned land usage.

(Code 1985, § 3.61(2))

Sec. 48-193. Purpose.

The purpose of this division is to promote, preserve, and enhance the natural resources within the city and protect them from adverse effects occasioned by illicit discharge directly or indirectly to the city stormwater system and to natural waterbodies located in and downstream of the city.

(Code 1985, § 3.61(3))

Sec. 48-194. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Civil penalty means civil penalties as set forth in the enforcement response procedures.

CFR means the Code of Federal Regulations.

Contaminated means containing a harmful quantity of any substance.

Contamination means the presence of or entry of any substance which may be deleterious to the public health or the quality of the water into the public stormwater system or state or federal waters.

Cosmetic cleaning means cleaning done for cosmetic purposes to the exterior of buildings, motorized vehicles, parking lots, recreational vehicles or similar activity. The term "cosmetic cleaning" does not include industrial cleaning, cleaning associated with manufacturing activities, hazardous or toxic waste cleaning, or any cleaning otherwise regulated under federal, state, or local laws.

ERP means the enforcement response procedure document referenced as part of this division.

Harmful quantity means the amount of any substance that will cause pollution of waters of the city, state or nation that will cause lethal or sub-lethal adverse effects on the representative, sensitive aquatic monitoring organisms residing in waters.

Mobile commercial cosmetic cleaning means power washing, steam cleaning and any other mobile cosmetic cleaning operation of vehicles or exterior surfaces engaged for commercial purposes.

MS4 (municipal separate storm sewer system) means the system of conveyances, including sidewalks, city streets, driveways, curb and gutter, ditches, channels, retention basins, catchbasins or similar stormwater inlets, or any other conveyance delivering water to the public storm sewer collection and delivery system.

MS4 permit means the permit issued by the state pollution control agency to the city for monitoring and maintaining water quality in its MS4. The Environmental Protection Agency has promulgated the National Pollution Discharge Elimination System, phase II, stormwater rules. The state pollution control agency has delegated the responsibility to administer the National Pollution Discharge Elimination System, phase II, stormwater permit system to MS4 communities.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the federal Clean Water Act, 33 USC 1251 et seq.

NOI (notice of intent) means a written notice to the state pollution control agency that the city plans on meeting the MS4 permit requirements.

NPDES means the National Pollutant Discharge Elimination System.

Point source means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. The term "point source" does not include return flows from irrigated agriculture or agricultural stormwater runoff.

Pollutant means dredged spoil; solid waste; incinerator residue; sewage; garbage; sewage sludge; filter backwash; munitions; chemical wastes; biological materials; toxic materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; and industrial, city, recreational, and agricultural waste discharged into water or into the city separate storm sewer system.

Pollution means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any waters of the state or the MS4, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into groundwater, subsurface soils, surface soils, the city separate storm sewer system (MS4) or the waters of the state.

Stormwater means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snow melt.

Stormwater pollution prevention plan or *SWPPP* means a plan required by a permit to discharge stormwater associated with industrial activity, including construction, and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with industrial activity at the facility.

Waters of the state means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or

underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

(Code 1985, § 3.61(4))

Sec. 48-195. Administration.

The city administrator and his authorized representatives shall administer, implement, and enforce the provisions of this division.

(Code 1985, § 3.61(5))

Sec. 48-196. Discharge into MS4, prohibited; exemptions.

- (a) A person commits a violation if the person introduces or causes to be introduced into the city MS4 any discharge that is not composed entirely of stormwater. The following are considered exempt discharge activities from enforcement action for a violation of this section:
- (1) A discharge authorized by, and in full compliance with a site specific NPDES permit such as a stormwater management plan permit for construction activities;
 - (2) A discharge or flow resulting from firefighting by the fire department;
 - (3) Agricultural stormwater runoff;
 - (4) A discharge or flow from water line flushing or disinfection that contains no harmful quantity of total residual chlorine or any other chemical used in line disinfection;
 - (5) A discharge or flow from lawn watering, or landscape irrigation;
 - (6) A discharge or flow from a diverted stream flow or natural spring;
 - (7) A discharge or flow from uncontaminated pumped groundwater or rising groundwater;
 - (8) Uncontaminated groundwater infiltration;
 - (9) Uncontaminated discharge or flow from a foundation drain, sump pump, or footing drain;
 - (10) A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;
 - (11) A discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;
 - (12) A discharge or flow from individual residential car washing;
 - (13) A discharge or flow from a riparian habitat or wetland;
 - (14) A discharge or flow from cold water (or hot water with prior permission of the city engineer) used in street washing or cosmetic cleaning that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance; or
 - (15) Drainage from a private residential swimming pool containing no harmful quantities of chlorine or other chemicals. Drainage from swimming pool filter backwash is prohibited.
- (b) No exemption shall be allowed under this section if:
- (1) The discharge or flow in question has been determined by the city to be a source of a pollutant or pollutants to the waters of the state or to the MS4;

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- (2) Written notice of such determination has been provided to the discharger; and
 - (3) The discharge has continued after the expiration of the time given in the notice to cease the discharge.
- (c) A person commits a violation if the person introduces or causes to be introduced into the MS4 any harmful quantity of any substance.

(Code 1985, § 3.61(6))

Sec. 48-197. Connection of sanitary sewer prohibited; violation constitutes nuisance.

A person commits an offense if the person connects a line conveying sewage to the MS4 or allows such a connection to continue. An actual or threatened discharge to the MS4 that violates or would violate this article is declared to be a nuisance. A line conveying sewage or designed to convey sewage that is connected to the MS4 is declared to be a nuisance.

(Code 1985, § 3.61(6))

Sec. 48-198. Enforcement response procedures (ERP).

The city has an ERP document that includes increasing penalties for illicit discharges of pollutants. This document includes written notices, citations, cease and desist orders as well as revocation of permits. The ERP document is on file in the office of the city clerk.

(Code 1985, § 3.61(7)1)

Sec. 48-199. Emergency suspension of utility service and MS4 access.

- (a) If there are state regulations restricting the interruption of service, the city may, without prior notice, suspend water service, sanitary sewer service, or MS4 discharge access to a person discharging to the MS4, waters of the state, or waste water treatment plant when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment or to the health or welfare of persons or may present imminent and substantial danger to the MS4 or waters of the state.
- (b) If the city administrator or city engineer determines that city-provided water or sanitary sewer service needs to be suspended, the city administrator or city engineer is empowered to order such suspension.
- (c) As soon as is practicable after the suspension of service or MS4 discharge access, the city administrator or city engineer shall notify the violator of the suspension in person or by certified mail, return receipt requested, and shall order the violator to cease the discharge immediately. When time permits, the city administrator or city engineer should also attempt to notify the violator prior to suspending service or access.
- (d) If the violator fails to comply with an order issued under this section, the city administrator or city engineer may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the state or to minimize danger to persons.
- (e) The city shall not reinstate suspended services or MS4 access to the violator until:
 - (1) The violator presents proof, satisfactory to the city engineer, that the noncomplying discharge has been eliminated and its cause determined and corrected;

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- (2) The violator pays the city for all costs the city incurred in responding to abating, and remediating the discharge or threatened discharge; and
 - (3) The violator pays the city for all costs the city will incur in reinstating service or access.
 - (f) A violator whose service or access has been suspended or disconnected may appeal such enforcement action to the city administrator, in writing, within ten days of notice of the suspension.
 - (g) The city may obtain a lien against the property to recover its response costs.
 - (h) The remedies provided by this section are in addition to any other remedies set out in this division. Exercise of this remedy shall not be a bar against, nor a prerequisite for, taking other action against a violator.
- (Code 1985, § 3.61(7)2)

Sec. 48-200. Nonemergency suspension of utility service and MS4 access.

- (a) Any person discharging to the MS4 in violation of this article may have city-provided water supply, sanitary sewer connection or MS4 access terminated by the city if such termination would abate or reduce the illicit discharge.
- (b) The city administrator or city engineer will notify a violator of the proposed termination of its water supply, sanitary sewer connection, or MS4 access. The violator may petition the city administrator for a reconsideration and hearing before the city council.
- (c) The city shall not reinstate suspended services or MS4 access to the discharger until the violator presents proof, satisfactory to the city engineer, that the noncomplying discharge has been eliminated and its cause determined and corrected and the violator pays the city for all costs the city will incur in reinstating service or MS4 access.
- (d) The remedies provided by this section are in addition to any other remedies set out in this division. Exercise of this remedy shall not be a bar against, nor a prerequisite for, taking other action against a violator.
- (e) A person commits a violation if the person reinstates water service, sanitary sewer service, and or MS4 access to premises terminated pursuant to this ordinance, without the prior approval of the city engineer.

(Code 1985, § 3.61(7)3)

Secs. 48-201—48-223. Reserved.

ARTICLE V. STORMWATER UTILITY

Sec. 48-224. Stormwater drainage utility established.

The city stormwater system shall be operated as a public utility pursuant to M.S.A. § 444.075, from which revenues will be derived subject to the provisions of this section and state law. The stormwater drainage utility will be part of the utility department and under the administration of the utilities director.

(Code 1985, § 3.60(1))

Sec. 48-225. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Residential equivalent factor (REF) means the ratio of the average volume of run-off generated by one acre of a given land use to the average volume generated by one acre of typical single-family residential land, during a standard two-year rainfall event.

(Code 1985, § 3.60(2))

Sec. 48-226. Stormwater drainage fees.

- (a) Stormwater drainage fees for parcels of land shall be determined by multiplying the REF for a parcel's land use by the parcel's acreage and then multiplying the resulting product by the stormwater drainage rate. The REF values for various land uses are as follows:

REF Values

| <i>Classification</i> | <i>Land use</i> | <i>REF number</i> |
|----------------------------|--------------------|-------------------|
| Residential | 35% impervious | Less than \$1.00 |
| Residential | 36—60% impervious | \$2.00 |
| Residential | 61—100% impervious | \$4.00 |
| Commercial and industrial | 35% impervious | \$1.25 |
| Commercial and industrial | 36—60% impervious | \$2.50 |
| Commercial and industrial | 61—100% impervious | \$5.00 |
| Cemeteries and golf course | | \$0.25 |

- (b) For the purposes of calculating stormwater drainage fees, all developed one- and two-family parcels shall be considered to have an acreage of one-third acre and an REF value of 1.00.

(Code 1985, § 3.60(3))

Sec. 48-227. Credits.

The council shall adopt policies recommended by the city administrator, by resolution, for adjustment of the stormwater drainage fee for parcels based upon hydraulic data to be supplied by property owners, which demonstrates a hydraulic response substantially different from the standards. Such adjustments of stormwater drainage fees shall not be made retroactively.

(Code 1985, § 3.60(4))

Sec. 48-228. Central business district fees.

The council shall adopt policies recommended by the city administrator, by resolution, for the adjustment of the stormwater drainage fee for parcels within the central business district. The adjustment shall be to equalize the stormwater drainage areas, since the central business district has a major portion of its parking provided by the city.

(Code 1985, § 3.60(5))

Sec. 48-229. Exemptions.

Public rights-of-way, public parks and agricultural land are exempt from stormwater drainage fees.

(Code 1985, § 3.60(6))

Sec. 48-230. Recalculation of fee.

If a property owner or person responsible for paying the stormwater drainage fee questions the correctness of an invoice for such charge, such person may have the determination of the charge recomputed by written request to the utilities director. All requests must be received within 60 days of mailing of the invoice in question by the city. The property owner may appeal the decision of the city administrator to the council, by filing notice of the appeal as provided in this Code.

(Code 1985, § 3.60(7))

Secs. 48-231—48-253. Reserved.

ARTICLE VI. WATER UTILITY

Sec. 48-254. Connection required.

- (a) If a public water supply system is accessible, and the connection is feasible, a service line must be installed to service the building or premises. When assessments are paid, the city will supply a water service line with curb stop according to current federal, state, and local regulations. The service line shall be sized according to what may be allowed under the current zoning requirements for the lot or parcel.
- (b) If there are extraordinary costs involved with supplying this service beyond what is allowed in the assessments or the owner wants a larger service, the costs shall be the responsibility of the owner. It shall be the responsibility of the owner to extend the service line into the building or premises, after which the owner shall assume ownership of the service line to the curb box/gate valve, with the exception of the water meter.
- (c) When replacing or upgrading an existing service line, and working in public road right-of-way, hired contractors by owners are required to obtain a street opening permit. Included in the replacement of any private service is the owner's responsibility and expense to reinstall any public road right-of-way (boulevard, sidewalk, curb, gutter, and street) to city specifications.
- (d) Upon inspection and approval by the utility, the city will assume ownership and maintenance of the new service line from the main up to and including the curb stop/gate valve.

(Code 1985, § 3.41(1))

Sec. 48-255. Public system extension on private property.

- (a) When public water and sewer mains and laterals extend onto private property, the city shall establish an easement for the ability to operate and maintain the system. All easements shall remain clear of any fences, buildings, gardens, trees shrubs and extensive landscaping, to facilitate the egress of city equipment into the easement for maintenance of the systems.

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- (b) The city will not be liable to repair or replace any such items removed to complete repairs on the system. Likewise, any roadway restoration may be completed by the city and billed to the owners or association. Upon completion of the repair the excavation will be filled with Class 5-binder material to grade if the owners or association would not like to have the city repair the roadway.

(Code 1985, § 3.41(4))

Sec. 48-256. Deficiency of water; shutting off water.

- (a) The city is not liable for any deficiency or failure in the supply of water to customers whether occasioned by shutting the water off for the purpose of making repairs, connections, emergency demand reduction procedures, or by any other cause whatever.
- (b) In case of fire, or alarm of fire, water may be shut off to insure a supply for firefighting. In making repairs or construction of new works, water may be shut off at any time and kept off so long as may be necessary.
- (c) The city reserves the right to shut off a service line for nonpayment of bills according to state and local regulations.

(Code 1985, § 3.30(1))

Sec. 48-257. Repair of service leaks.

- (a) The consumer owns the service line to the curb box/gate valve, including the connections to such devices on the owner's side. It is the responsibility of the consumer to repair and maintain private service pipe from the curb box/gate valve up to and throughout the house or commercial building except the water meter, which remains the responsibility of the utility.
- (b) In case of failure upon the part of any consumer or owner to repair any leak occurring in his service pipe within 24 hours after oral or written notice has been given the owner or occupant of the premises, the water may be shut off and will not be turned on until a reconnection charge has been paid and the water service has been repaired. When the waste of water is great or when damage is likely to result from the leak, the water will be turned off if the repair is not preceded with immediately.
- (c) The city utility will be responsible for service leaks from the main up to and including the curb box/gate valve. Included in this is the replacement responsibility and expense to restore any public road right-of-way (boulevard, sidewalk, curb, gutter, and street) to city specifications. In the course of these repairs, the city will not replace any private infrastructure and items such as (landscaping, trees, driveway surfacing, etc.). Boulevard areas will be brought up to grade, raked out, and seeded down with grass seed. Driveway areas will be brought up to grade with Class V and it shall be the owner's responsibility to replace any surfacing.

(Code 1985, § 3.30(2))

Sec. 48-258. Abandoned services.

- (a) All service installations connected to the water system that have been abandoned or, for any reason that have become useless for further service shall be disconnected at the main. The owner of the premises, served by this service, shall pay the cost of the excavation and restoration. The utility shall perform an inspection of the disconnection.
- (b) If a new building is constructed on a building site where there is access to a previously used existing service, and with utility department approval, a new permit may be taken out and the appropriate charges shall be made as if this were a new service. If the existing service does not meet the needs of new building, or the

new owner is not willing to take responsibility for the existing service, it shall be abandoned and a new service installed at the property owner's expense.

- (c) It is unlawful for any person to cause or allow any service pipe to be hammered or squeezed together at the ends to stop the flow of water, or to save expense in improperly removing such pipe from the main. Also, the city shall correct such improper disposition and the cost incurred shall be borne by the person causing or allowing such work to be performed.

(Code 1985, § 3.30(3))

Sec. 48-259. Service pipes.

- (a) No more than one house or building shall be supplied from one service connection unless approved in writing by the city utilities department.
- (b) Every service pipe must be laid in such manner as to prevent rupture by settlement. The service pipe shall be placed not less than eight feet below the surface in all cases so arranged as to prevent rupture and stoppage by freezing.
- (c) Service pipes must extend from the public utility to the inside of the building; or if not taken into a building then to the hydrant or other fixtures which they are intended to supply.
- (d) In the event of an existing service pipe freezing, it is the responsibility of the owner to hire a contractor for thawing.
- (e) Valves, the same size as the service pipe, shall be placed within six feet of, and within sight of, where the service pipe enters the building, ahead of the meter as well as immediately after the meter and well protected from freezing.
- (f) Joints on copper tubing shall be flared or compression-fitted and kept to a minimum. No joints shall be used for a service up to 100 feet in length, and then only one joint for each additional one foot in length. All joints shall be left uncovered until inspected. Minimum size connection with the water mains shall be one inch in diameter.

(Code 1985, § 3.30(4))

Sec. 48-260. Water services to commercial and residential buildings with multiple tenants.

- (a) As with any other service, a single service line sized for the building usage and a meter will be installed into the building. If the owners elect to service their multiple tenants with more than one building meter, the meters shall be located together in a common space readily accessible for meter maintenance, and with separate service lines plumbed to the respective tenants.
- (b) Each separate meter and service line shall have a lockable full flow valve that can be locked with a water department padlock for service and nonpayment of bills without having to shut off the whole building. If this common space does not include the electric meter, each water meter will have a remote water meter installed at the location of the electric meter with an 18 to 20 gauge solid copper, three or four strand (bell type) wire connecting the meter with the remote.
- (c) Each remote meter shall be labeled and identified as to which remote is for which apartment, unit, or business.

(Code 1985, § 3.41(6))

Sec. 48-261. Prohibited uses or restricted hours.

Whenever the city shall determine that a shortage of water threatens the city, it may entirely prohibit water use or limit the times and hours during which water may be used from the city water system or surface water for lawn and garden sprinkling, irrigation, car washing, air conditioning, and other uses, or either or any of them. It is unlawful for any water consumer to cause or permit water to be used in violation of such determination after public announcement thereof has been made through the news media specifically indicating the restrictions thereof. This includes irrigation systems that pull from surface water such as lakes, holding ponds, streams, etc.

(Code 1985, § 3.30(6))

Sec. 48-262. Private fire hose connections.

Owners of structures with self-contained fire protection systems may apply for and obtain permission to connect the street mains with hydrants, large pipes, and hose couplings, for use in case of fire only, at their own installation expense and at such rates as the council may adopt by resolution.

(Code 1985, § 3.30(7))

Sec. 48-263. Opening hydrants.

It is unlawful for any person, other than members of the fire department or other person duly authorized by the city, in pursuance of lawful purpose, to open any fire hydrant or attempt to draw water from the same or in any manner interfere therewith. It is also unlawful for any person so authorized to deliver or suffer to be delivered to any other person any hydrant key or wrench, except for the purposes strictly pertaining to their lawful use.

(Code 1985, § 3.30(8))

Sec. 48-264. Unmetered service.

Unmetered water services on the city distribution system within the city are prohibited.

(Code 1985, § 3.30(9))

Sec. 48-265. Water meters.

All water meters shall be supplied by the city, installed at the expense of the property owner, and the city shall thereafter own such meter. The water meters must be readily accessible. All repairs of water meters not resulting from normal usage shall be the responsibility of the property owner. Commercial water meters will be charged a maintenance fee per the fee schedule.

(Code 1985, § 3.30(10))

Sec. 48-266. Compliance with state plumbing code required.

All piping, connections and appurtenances shall be installed and performed strictly in accordance with the state plumbing code. Failure to install or maintain the same in accordance therewith, or failure to have or permit required inspections shall, upon discovery by the city, be an additional ground for termination of water service to any consumer.

(Code 1985, § 3.30(11))

Sec. 48-267. Backflow prevention.

- (a) Approved devices or assemblies for the protection of the potable water supply must be installed at any plumbing fixture or equipment where backflow or back-siphonage may occur and where a minimum air gap cannot be provided between the water outlet to the fixture or equipment and its flood level rim.
- (b) Any device or assembly for the prevention of backflow or back-siphonage installed shall have first been certified by a recognized testing laboratory and have a certification number clearly visible on the device. AWWA, ASSE, and USC are the certified labs recognized by the city. These devices must be readily accessible.
- (c) Devices or assemblies installed in a potable water supply system for protection against backflow shall be maintained in good working condition by the person having control of such devices or assemblies. The devices or assemblies shall be tested at the time of installation, repair or relocation and not less than on an annual schedule thereafter, or more often when required by the city. Where found to be defective or inoperative, the device or assembly shall be repaired or replaced. No device or assembly shall be removed from use or relocated, or other device or assembly substituted, without the approval of the city.
- (d) Backflow preventers shall be inspected frequently after initial installation to assure that they have been properly installed and that debris resulting from piping installation has not interfered with the functioning of the assembly.

(Code 1985, § 3.30(12))

Sec. 48-268. Cross connection control.

- (a) Cross connection between potable water systems and other systems or equipment containing water or other substances of unknown or questionable safety are prohibited, except when and where, as approved by the city having jurisdiction, suitable protective devices such as air breaks, break tanks, RPZs or equal, are installed, tested, and maintained to insure proper operation on a continuing basis.
- (b) All industrial and commercial customers must have their facilities inspected and audited by a qualified accredited person from an agency approved by the administrated authority. The inspection is to determine whether all applicable plumbing fixtures or processes that require backflow and cross connection control devices have the appropriate control devices installed and that they are installed properly and that all appropriate maintenance has been performed to date.
- (c) The audit will show a listing of all such devices, make and model, serial number, and ASSE, AWWA or USC number. The accredited person or agency shall submit a signed and certified report to the city water services department, and facility that the person or agency is doing the work for. These records will be kept for a period of seven years. A new inspection of the entire facility is required whenever a substantial modification to the existing facility is done. A new audit is required whenever control devices, including beverage dispensers, are replaced or added.
- (d) The city may require more frequent inspections or audits if deemed necessary to assure protection of the potable water system.

(Code 1985, § 3.30(13))

Sec. 48-269. Private wells.

- (a) The city is required to comply with the state mandated wellhead protection program. The city must protect the aquifer from contamination from private as well as public sources within its jurisdiction. The city must also protect the public water system from contaminating cross-connections made from private wells. These connections are very hard to regulate. For that reason, the city prohibits the installation of private water wells where city water is provided within a reasonable distance. This does not include wells in existence at the effective date of the ordinance from which this section is derived.
- (b) Large areas needing irrigation are exempt from the prohibition of private wells upon application and approval of the city administrator. These areas would include golf courses, athletic fields, and large expanses of lawn under common ownership.
- (c) Existing potable water wells are allowed only if no water pipe of the city water system is connected with any pump, well, pipe, tank, or any device that is connected with any other source of water supply. When such are found, the city shall notify the owner or occupant to disconnect the same and, if not immediately done, the city water shall be turned off.
- (d) Before any new connections to the city system are permitted, the city shall ascertain that no cross-connections will exist when the new connection is made. When a building is connected to city water the private water supply may be used only for such purposes as the city may allow. A licensed well contractor must properly seal any existing private wells that are not being used or are abandoned.
- (e) Wells and borings, Minn. R. ch. 4725, is adopted by reference as though set forth verbatim herein, one copy of which shall be marked as an official city copy and kept on file in the office of the city clerk to inspection and use by the public. It is unlawful to construct any private water well except in accordance with the adopted administrative rules.

(Code 1985, §§ 3.30(5), 4.21(2); Ord. No. 2021-8 , § 1, 10-4-2021)

Sec. 48-270. Additional rules and regulations.

The city council may, by resolution, adopt such additional rules and regulations relating to placement, size and type of equipment as it, in its discretion, deems necessary or desirable. Copies of such additional rules and regulations shall be kept on file in the office of the city clerk and uniformly enforced.

(Code 1985, § 3.30(14))

Chapter 50 ZONING³⁸

ARTICLE I. IN GENERAL

³⁸State law reference(s)—Municipal and development M.S.A. § 462.351 et seq.; authority for municipal subdivision regulations, M.S.A. § 462.358; comprehensive plans, M.S.A. § 462.355; zoning ordinances, M.S.A. § 462.357.

Sec. 50-1. Intent and purpose.

- (a) The intent of this chapter is to protect the public health, safety and general welfare of the city and its people through the establishment of minimum regulations in regard to location, erection, construction, alteration and use of structures and land.
- (b) Such regulations are established to protect such use areas; to promote orderly development and redevelopment; to provide adequate light, air and convenience of access to property; to prevent congestion in the public right-of-way; to prevent overcrowding of land and undue concentration of structures by regulating land, building, yards and density of population; to provide for compatibility of different land uses; to provide for administration of this chapter, to provide for amendments; to prescribe penalties for violation of such regulations; and to define powers and duties of the city staff, the board of adjustment and appeals, the planning commission, and the council in relation to this chapter.

(Code 1985, § 11.01(1))

Sec. 50-2. Authority.

This chapter is enacted pursuant to the authority granted by the Municipal Planning Act, M.S.A. §§ 462.351 to 462.365.

(Code 1985, § 11.01(8))

Sec. 50-3. Definitions.

Words and terms not defined in this section or in section 1-2 shall be given their common meaning according to a widely used dictionary of American standard English. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abutting means making contact with another parcel and sharing one of more common points, or separated only by public thoroughfare, railroad, public utility right-of-way or navigable waters.

Accessory building or use means a subordinate building or use which is located on the same lot on which the main building or use is situated, and which is reasonably necessary, incidental to, and supportive of the conduct of the principal use of such building. An accessory building or use shall be lesser in extent, size, or area to that of the principal building or use.

Addition means a physical enlargement of an existing structure.

Adult uses includes adult bookstores, adult motion picture theatres, adult motion picture sales/rental, adult mini-motion picture theatres, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship establishments, adult conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting studios, and other premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of specified sexual activities or specified anatomical areas which are capable of being seen by members of the public. Activities classified as obscene as defined by M.S.A. § 617.241 are not included. The following terms relate to adult uses:

Adult accessory uses means the offering of retail goods for sale which are classified as adult uses on a limited scale and which are incidental to the primary activity and goods or services offered by the establishment. Examples of such items include the sale of adult magazines, the sale or rental of adult motion pictures, the sale of adult novelties, and the like.

Adult principal uses means the offering of goods or services which are classified as adult uses as a primary or sole activity of a business or establishment and include, but are not limited to, the following:

Adult bookstore means a building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture films if such building or portion of a building is not open to the public generally but only to one or more classes of the public excluding any minor by reason of age or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.

Adult cabaret means a building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of specified sexual activities or specified anatomical areas.

Adult companionship establishment means a companionship establishment which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Adult conversation/rap parlor means a conversation/rap parlor which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Adult health/sport club means a health/sport club which excludes minors by reason of age, or if such club is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Adult hotel or motel means a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Adult massage parlor or health club means a massage parlor or health club which restricts minors by reason of age, and which provides the services of massage, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Adult mini-motion picture theatre means a building or portion of a building with a capacity for less than 50 persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult modeling studio means an establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

Adult motion picture arcade means any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motor picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or

characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

Adult motion picture theatre means a building or portion of a building with a capacity of 50 or more persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age or if such material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult novelty business means a business which has as a principal activity the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation.

Adult sauna means a sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Adult steam room/bathhouse facility means a building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent if such building or portion of a building restricts minors by reason of age or if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Body painting studio means an establishment or business which provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude in terms of specified anatomical areas.

Specified anatomical areas means less than completely and opaquely covered human genitals, pubic region, buttock, anus, or female breasts below a point immediately above the top of the areola and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means and includes all of the following:

- a. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoerasty;
- b. Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence;
- c. Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation;
- d. Fondling or touching of nude human genitals, pubic region, buttocks or female breast;
- e. Situations involving a person, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such persons;
- f. Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being; or
- g. Human excretion, urination, menstruation, vaginal or anal irrigation.

Agriculture uses means those uses commonly associated with the growing of produce on farms such as field crop farming; pasture for hay; fruit growing; tree, plant, shrub, or flower nursery without buildings; truck

gardening; roadside stand for sale in season of products grown on premises; and livestock raising and feeding, but not including fur farms, commercial animal feed lots, and kennels.

Airport means the Buffalo Municipal Airport.

Airport elevation means the established elevation of the highest point on the usable landing area which elevation is established to be 968 feet above mean sea level.

Airport hazard means any structure, tree, or use of land which obstructs the air space required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport; and any use of land which is hazardous to persons or property because of its proximity to the airport.

Alley means a public or private right-of-way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on a street.

Antenna, cellular telephone, means a device consisting of a metal, carbon fiber, or other electromagnetically conductive rods or elements, usually arranged on an antenna support structure, and used for the transmission and reception of radio waves in wireless telephone communications.

Antenna, public utility microwave, means a parabolic dish or cornucopia shaped electromagnetically reflective or conductive element used for the transmission or reception of point-to-point UHF or VHF radio waves in wireless telephone communications, but not including the supporting structure thereof.

Antenna, radio and television, broadcast transmitting, means a wire, set of wires, metal or carbon fiber rod or other electromagnetic element used to transmit public or commercial broadcast radio or television programming, but not including the support structure thereof.

Antenna, radio and television, receiving, means a wire, set of wires, metal or carbon fiber element, other than satellite dish antennas, used to receive radio, television, or electromagnetic waves, but not including the supporting structure thereof.

Antenna, satellite dish, means a device incorporating a reflective surface that is solid, open mesh, or bar configured and is in the shape of a shallow dish, cone, horn, or cornucopia. Such device is used to transmit or receive radio or electromagnetic waves between terrestrially or orbitally based uses. The term "antenna, satellite dish" includes, but is not limited to, what are commonly referred to as satellite earth stations, TYROs (television, receive only) and satellite microwave antennas.

Antenna, short-wave radio transmitting and receiving means a wire, set of wires or a device, consisting of a metal, carbon fiber, or other electromagnetically conductive element used for the transmission and reception of radio waves used for short-wave radio communications, but not including the supporting structure thereof.

Antenna support structure, means any pole, telescoping mast, tower, tripod, or any other structure which supports a device used in the transmitting or receiving of radio frequency energy.

Apartment means a dwelling unit which is part of a multiple-family dwelling structure usually for rental, consisting of a room or suite of rooms which is designed for, intended for, or occupied as a residence by a single-family or an individual, and is equipped with common cooking facilities.

Aquifer recharge areas means all land surface areas which by nature of their surface or subsurface soil characteristics are determined to contribute to the replenishment of subsurface water supplies.

Artificial obstruction means any obstruction which is not a natural obstruction (see *Obstruction*).

Automobile repair, auto body, means providing collision service, including body frame or fender straightening or repair; overall painting or paint job; and vehicle steam cleaning.

Automobile repair, major, means providing general repair, rebuilding or reconditioning engines, motor vehicles or trailers; vehicle steam cleaning.

Automobile repair, minor, means providing minor repairs, incidental body and fender work, painting and upholstering, replacement of parts and motor services to passenger automobiles and trucks not exceeding 12,000 pounds gross weight, but not including any operation specified under automobile repair, major.

Automobile wrecking or junkyard means any place where two or more vehicles not in running condition or not licensed, or parts thereof, are stored in the open and are not being restored to operation or any land, building or structure used for wrecking or storing of such motor vehicles or parts thereof; and including any commercial salvaging and scavenging of any other goods, articles or merchandise.

Basement means that portion of a building between floor and ceiling, which is partly below and partly above grade, but so located that the vertical distance from grade to the floor below is less than the vertical distance from grade to ceiling (see *Story*). See figure of a basement diagram below:

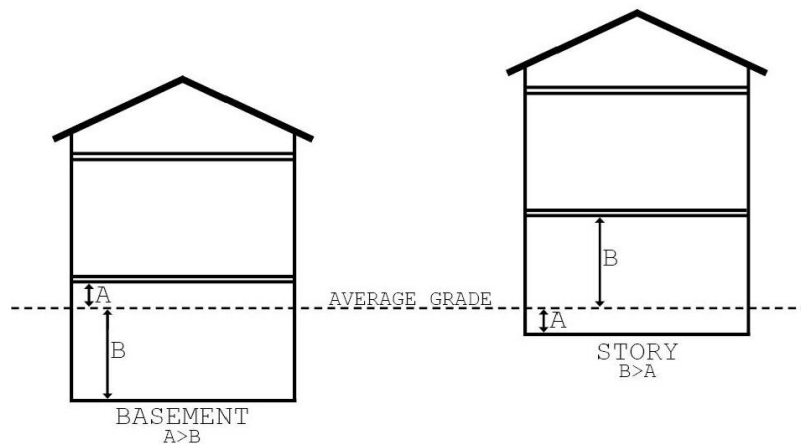


Figure 1. Basement

Bay means cantilevered area of a room.

Bluff means a topographic feature such as a hill, cliff, or embankment having all of the following characteristics:

- (1) Part, or all, of the feature is located in a shoreland area.
- (2) The slope rises at least 25 feet above the ordinary highwater level of the waterbody.
- (3) The grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary highwater level averages 30 percent or greater.
- (4) The slope must drain toward the waterbody.

An area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered part of the bluff.

Bluff impact zone means a bluff and land located within 20 feet from the top of a bluff.

Boardinghouse means a residential building other than a hotel where, for compensation, lodging and meals are provided to three or more persons, not of the principal family therein.

Boathouse means a structure used solely for the storage of boats or boating equipment.

Buildable area means the portion of a lot remaining after required setbacks and yards have been provided but excluding wetlands and floodplains.

Building means any structure used or intended for supporting or sheltering of any use or occupancy.

Building height means a distance to be measured from the mean ground level to the top of a flat roof, to the mean distance of the highest gable on a pitched or hip roof, to the deck line of a mansard roof, to the uppermost point on all other roof types. See figure of building height below:

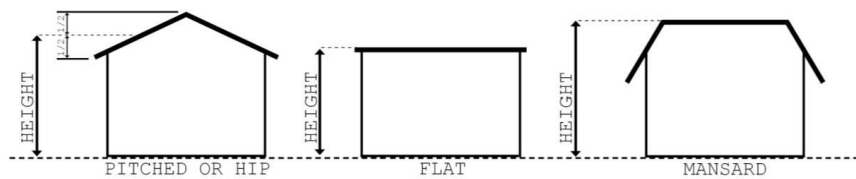


Figure 2. Building Height

Building line means a line parallel to a lot line or the ordinary highwater level at the required setback beyond which a structure does not extend.

Business means any establishment, occupation, employment or enterprise where merchandise is manufactured, exhibited or sold, or where services are offered for compensation.

Carport means a canopy constructed of metal or other materials supported by posts either ornamental or solid and completely open on one or more sides. A carport shall be treated as an accessory building for purposes of this chapter.

Cellar means that portion of a building between floor and ceiling which is wholly or partly below grade and so located that the vertical distance from grade to the floor below is equal to or greater than the vertical distance from grade to ceiling. See *Basement*.

Channel means a natural or artificial depression of perceptible extent, with definite bed and banks to confine and conduct water either continuously or periodically.

Church means a building, together with its accessory buildings and use; where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship. The term "church" shall include and or be interchangeable with all places of worship, including synagogues, mosques, or any such building regardless of religious affiliation.

Clear cutting means the removal of an entire stand of trees.

Club or lodge means a club or lodge is an association of persons who are bona fide members paying annual dues, use of premises being restricted to members and their guests.

Commercial planned unit development means in a shoreland district, uses that provide transient, short-term lodging spaces, rooms, or parcels and their operations are essentially service-oriented. For example, hotel/motel accommodations, resorts, recreational vehicle and camping parks, and other primarily service-oriented activities are commercial planned unit developments.

Commercial recreation means bowling alley, cart track, jump center, golf, pool hall, vehicle racing or amusement, dance hall, skating, trampoline, tavern, theatre, firearms range, boat rental, amusement ride, campground, park and similar use.

Commissioner means the commissioner of the state department of natural resources.

Comprehensive plan means a compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development, both private and public, of the city and includes, but is not limited to, the following:

- (1) Statements of policies;
- (2) Goals;

-
- (3) Standards;
 - (4) Land use plan;
 - (5) Community facilities plan;
 - (6) Transportation plan; and
 - (7) Recommendations for plan execution.

The comprehensive plan represents the planning commission's recommendations for the future development of the city, as approved by the council.

Conditional use means a use, which because of special problems of control the use presents, requires reasonable, but special, unusual and extraordinary limitations peculiar to the use or location of such use, for the protection of the public welfare, or its potential impacts on public services, and the integrity of the comprehensive plan.

Conditional use permit means a permit issued by the council in accordance with procedures specified in this chapter, as a flexibility device to enable the council to assign dimensions to a proposed use or conditions surrounding it after consideration of adjacent uses and their functions and the special problems which the proposed use presents.

Condominium means a development containing individually owned dwelling units or commercial units, and jointly owned and shared areas and facilities under common management, which dwelling or development is subject to the provisions of the Uniform Condominium Act, M.S.A. § 515A.1-101 et seq.

Conforming use means any structure, tree, or object of natural growth, or use of land that complies with all the applicable provisions of this article or any amendment to this article.

Convenience food establishment means an establishment which serves food in or on disposable or edible containers in individual servings for consumption on or off the premises.

Cooperative housing means a multiple-family dwelling owned and maintained by the residents and subject to the provisions of 26 USC 216(b)(1). The entire structure and real property are under common ownership as contrasted to a condominium dwelling where individual units are under separate individual occupant ownership.

Court means an unoccupied open space other than a yard which is bounded on two or more sides by the walls of the buildings.

Crowding potential means the ratio of total acreage to shore miles.

Day care facility means any state licensed facility, public or private, which for gain or otherwise regularly provides one or more persons with care, training, supervision, habitation, rehabilitation, or developmental guidance on a regular basis, for periods of less than 24 hours per day. The term "day care facility" includes, but is not limited to, family day care homes, group family day care homes, day care centers, day nurseries, nursery schools, daytime activity centers, day treatment programs, and day services, as defined in M.S.A. § 245A.02.

Deck means a horizontal, unenclosed platform or uncovered porch built up above natural grade, but which is not a patio, with or without attached railings, seats, trellises, or other features, attached or functionally related to a principal use or site and at any point extending more than 12 inches above the natural grade.

Department store means a business which is conducted under a single owner's name wherein a variety of unrelated merchandise and services are housed enclosed and are exhibited and sold directly to the customer for whom the goods and services are furnished.

Deposition means any rock, soil, gravel, sand or other material deposited naturally or by man into a waterbody, watercourse, floodplains or wetlands.

District means a section of the city for which the regulations and provisions governing the use of buildings and land are uniform for each class of use permitted therein.

Diversion means a channel that intercepts surface water runoff and that changes the accustomed course of all or part of a stream.

Dog kennel, commercial, means any place which is not a dog kennel, residential, where three or more dogs over three months of age are boarded, bred or offered for sale, except a veterinary clinic.

Dog kennel, residential, means any residential dwelling unit where three or more dogs over three months of age are kept as domestic pets, and which is in compliance with chapter 6.

Draining means the removal of surface water or groundwater from land.

Dredging means to enlarge or clean-out a waterbody, watercourse or wetland.

Drive-through window means a portion of a commercial establishment which accommodates service to the patron's automobile from which the occupants may receive a service or in which products purchased from the establishment may be received for use or consumption off-site.

Duplex, triplex and quad mean a dwelling structure on a single lot, having two, three, and four units respectively, being attached by common walls and each unit equipped with separate sleeping, cooking, eating, living, and sanitation facilities.

Dwelling means a building or portion thereof, designated exclusively for residential occupancy, including one-family, two-family, and multiple-family dwellings, but not including hotels, motels, boardinghouses, mobile homes or trailers.

Dwelling, multiple (apartment), means a building designed with three or more dwelling units exclusively for occupancy by three or more families living independently of each other but sharing hallways and main entrances and exits.

Dwelling, single-family, means a dwelling unit designed exclusively for occupancy by one family. An attached dwelling is joined to another at one or more sides by a common wall or connected vertically with a common ceiling and floor. A detached dwelling unit is not attached to another dwelling or structure.

Dwelling, two-family, means a dwelling designed exclusively for occupancy by two families living independently of each other. A double bungalow is a two-family dwelling with two units side-by-side. A duplex is a two-family dwelling with one unit above the other.

Dwelling unit means a residential building or portion thereof intended for occupancy by one family, and which includes spaces for sleeping, cooking and sanitation which are available only to occupants of the dwelling unit, but not including hotels, motels, nursing homes, seasonal cabins, boardinghouses or roominghouses, tourist homes or trailers.

Efficiency apartment means a dwelling unit consisting of one principal room exclusive of bathroom, hallway, closets or dining alcove.

Elderly senior citizen housing means a legally restricted multiple dwelling building with open occupancy limited to persons over 55 years of age and their spouses or dependents.

Elevator penthouse means an enclosure located on the top of a building which houses the working mechanisms of an elevator.

Equal degree of encroachment means a method of determining the location of encroachment lines so that floodplain land on both sides of a stream is capable of conveying a proportionate share of flood flows. The term "equal degree of encroachment" is determined by considering the effect of encroachment on the hydraulic efficiency of the floodplain along both sides of a stream for a significant reach.

Essential services means the erection, construction, alteration or maintenance by public utilities or municipal departments of underground or overhead telephone, gas, electrical, communication, water or sewer transmission, distribution, collection, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith for the furnishing of adequate service by such private or public utilities or municipal departments. Transmission reception support structures and antennas shall not be considered an essential service.

Established residential neighborhood in a built-up urban area means an area which, if it existed on or before January 1, 1978 shall be considered a conforming use that shall not be prohibited.

Exterior storage means the storage of goods, materials, equipment, manufactured products and similar items not fully enclosed within a building.

Family means a person living alone or any of the following groups, provided that the members of the group live together as a single housekeeping unit and do not exceed the maximum occupancy limits of the applicable building code:

- (1) An individual plus one or more persons related by blood, marriage, adoption, guardianship or other duly authorized custodial relationship, including foster children and bona fide domestic servants employed on a full-time basis by the family in the dwelling unit;
- (2) Two unrelated people and any children related to either of them;
- (3) One or more persons occupying a premises, subject to a limit of not more than three unrelated persons 18 years of age or older. The definition of the term "family" is established for the purpose of preserving the character of residential neighborhoods by controlling population density, noise, disturbance and traffic congestion and shall not be applied so as to prevent the city from making reasonable accommodation where the city determines it necessary under applicable federal fair housing laws; or
- (4) Group residential facilities meeting the definition of this Code, when properly licensed by the state department of human services or the state department of corrections under M.S.A. §§ 245A.11 and 241.021 or such facilities that are registered with the state pursuant to state law.

Farm means a tract of land of ten or more acres in size often with a house and barn plus other buildings on which crops and often livestock are raised which is qualified as an agricultural use under applicable state regulations.

Farm, hobby, means a tract of land generally consisting of ten or less acres in size with a house and accessory buildings on which crops and often livestock are raised but not as a principal source of income. A hobby farm shall not qualify for exemptions provided in this chapter for farms.

Farming means the process of operating a farm for the growing and harvesting of crops which shall include those necessary accessory buildings, related to operating the farm, and the keeping of common domestic farm animals.

Fence means a fence is defined for the purpose of this chapter as any partition, structure, wall or gate erected as a dividing mark, barrier or enclosure. The term "fence" includes retaining walls, but not fences or walls less than 36 inches in height from the adjoining natural grade.

Fence, boundary line, means all fences located within five feet of a property line.

Fence, interior yard, means all fences located five beyond a property line.

Filling means the act of depositing any rock, soil, gravel, sand or other material so as to fill a waterbody, watercourse or wetland.

Flood means a temporary rise in a stream flow or stage which results in inundation of the areas adjacent to the channel.

Flood frequency means the average frequency, statistically determined, for which it is expected that a specific flood stage or discharge may be equaled or exceeded. By strict definition, such estimates are designated exceedance frequency, but in practice the term "frequency" is used. The frequency of a particular stage or discharge is usually expressed as having a probability of occurring once within a specific number of years.

Flood fringe means that portion of the floodplain outside of the floodway.

Flood profile means a graph or a longitudinal plot of water surface elevation of a flood event along a reach of a stream or river.

Floodplain means the channel or beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood. Floodplain areas within the city shall encompass all areas designated as zone a on the flood insurance rate map.

Floodway means the bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining floodplain which are reasonably required to carry or store the regional flood discharge.

Floor area means the sum of the gross horizontal areas of the several floors of the building or portion thereof devoted to a particular use, including accessory storage areas located within selling or working space such as counters, racks or closets, and any basement floor area devoted to retailing activities, to the production or processing of goods, or to business or professional offices. However, the floor area shall not include basement or cellar floor area other than area devoted to retailing activities, the production or processing of goods, or to business or professional offices. The floor area of a residence shall not include the cellar area.

Forest land conversion means the clear cutting of forested lands to prepare for a new land use other than re-establishment of a subsequent forest stand.

Garage, private, means an accessory building or accessory portion of the principal building which is intended for and used to store the private passenger vehicles and trucks not exceeding 12,000 pounds gross weight, of the family or families resident upon the premises, and in which no business service or industry is carried on.

Garage, public, means a building or portion of a building, except any herein defined as a private garage or as a repair garage, used for the storage of motor vehicles, or where any such vehicles are kept for remuneration or hire and in which any sale of gasoline, oil and accessories is only incidental to the principal use.

Grade (adjacent ground elevation) means the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line, or when the property line is more than five feet from the building, between the building and a line five feet from the building.

Grading means changing the natural or existing topography of land.

Group care facility means any state licensed facility, public or private, which for gain or otherwise regularly provides one or more persons with a 24-hour per day substitute for care, food, lodging, training, education, supervision, habilitation, rehabilitation, and treatment they need, but which for any reason cannot be furnished in the person's own home. The term "group care facility" includes, but is not limited to, state institutions under the control of the commissioner of public welfare, domestic abuse shelters, foster homes, residential treatment centers, maternity shelters, group homes, residential programs, or schools for physically disabled children, as defined by M.S.A. ch. 245A but not those facilities housing family, as defined in this chapter.

Height, for the purpose of determining the height limits in all zones set forth in this chapter and shown on exhibits, means the datum shall be means sea level elevation unless otherwise specified.

Height of building means the vertical distance between the average elevation between the highest and lowest ground levels at the perimeter of a building, and the highest point of a flat roof or average height of the highest gable of a pitched or hipped roof. See figure of building height below:

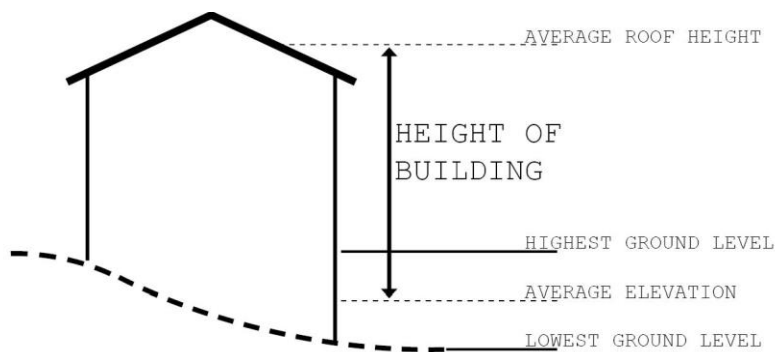


Figure 3. Height of Building

Home occupation means any occupation or profession engaged in by the occupant of a residential dwelling unit, which is clearly incidental and secondary to the residential use of the premises and does not change the character of the premises or neighborhood in which it is located.

Hotel means any building or portion thereof occupied as the more or less temporary abiding place of individuals and containing six or more guest rooms, used, designated or intended to be used, let or hired out to be occupied, or which are occupied by six or more individuals for compensation, whether the compensation be paid directly or indirectly.

Impervious surface means an artificial or natural surface through which water, air or roots cannot penetrate. Any impervious material with a horizontal measurement of one foot or more in any dimension shall be included in the calculation of impervious surface. Elevated structures which allow drainage through to pervious surfaces directly below, such as decks, shall not be included in the calculation of impervious surface. The use of pervious pavement materials when installed to allow the percolation of drainage into the soil shall not be included in the calculation of impervious surface.

Intensive vegetation clearing means the complete removal of trees or shrubs in a contiguous patch, strip, row, or block.

Interlock means this is the painted line or barrier in a parking lot that separates two facing rows of parking from one another.

Interim use means a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer allow it.

Intermittent means a stream or portion of a stream that flows only in direct response to precipitation.

Junkyard means an open area where waste, used, or secondhand materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including, but not limited to, scrap iron and other metals, paper, appliances, furniture, rags, rubber, tires and bottles. The term "junkyard" includes an auto wrecking yard, but does not include uses established entirely within closed buildings.

Land reclamation means the process of the re-establishment of, acceptable topography (i.e., slopes), vegetative cover, soil stability and the establishment of safe conditions appropriate to the subsequent use of the land.

Landing area means the area of the airport used for the landing, taking off, or taxiing of aircraft.

Lodginghouse means a building other than a hotel, where for compensation for definite periods, lodging is provided for three or more persons not of the principal family, but not including a building providing this service for more than ten persons.

Lot means land occupied or to be occupied by a building and its accessory buildings, together with such open spaces as are required under the provisions of this zoning regulation, having not less than the minimum area required by this chapter for a building site in the district in which such lot is situated and having its principal frontage on an improved public street.

Lot area means the area of a horizontal plane within the lot lines.

Lot, base, means lots meeting all the specifications in the zoning district prior to being subdivided into a two-family dwelling or quadraminium subdivision.

Lot, corner, means a lot situated at the junction of and abutting on two or more intersecting streets; or a lot at the point of deflection in alignment of a single street, the interior angle of which is 135 degrees or less.

Lot, depth, means the shortest horizontal distance between the front lot line and the rear lot line measured from a 90-degree angle from the street right-of-way within the lot boundaries. See figure of lot depth as follows:

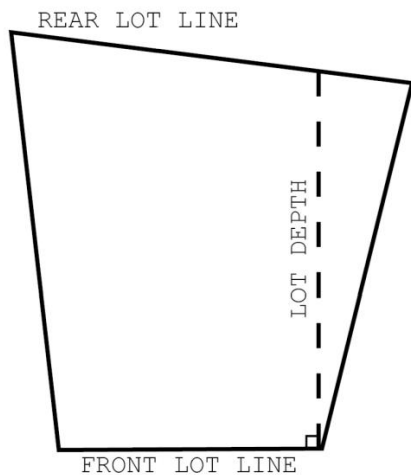


Figure 4. Lot Depth

Lot, frontage, means the front of a lot shall be, for purposes of complying with this chapter, that boundary abutting a public right-of-way which meets the minimum width of the applicable zoning district, but which has the least width if the lot has more than one frontage. See figure of lot frontage diagram as follows:

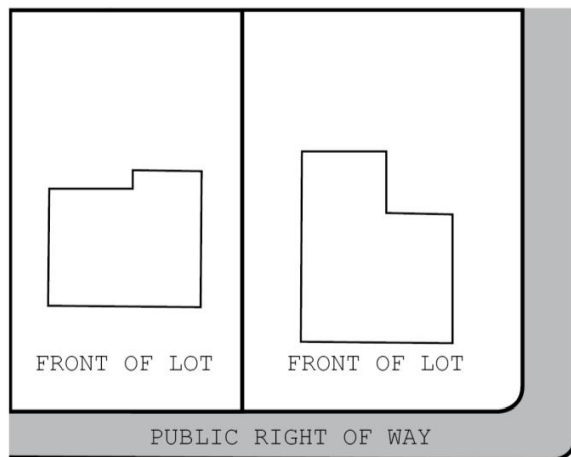


Figure 5. Lot Frontage

Lot, interior, means a lot, other than corner lot, including through lots.

Lot, line, means a property boundary line of any lot held in single or separate ownership; except that where any portion of the lot extends into the abutting street or alley, the lot line shall be deemed to be the easement or property line marking the street or alley right-of-way.

Lot of record means a parcel of land, whether subdivided or otherwise legally described and recorded prior to the effective date of the ordinance from which this chapter is derived, or approved by the city as a lot subsequent to such date and which is occupied by or intended for occupancy by one principal building or principal use together with any accessory buildings and such open spaces as required by this chapter and having its principal frontage upon an improved public street.

Lot, through, means a lot fronting on two generally parallel streets.

Lot, unit, means lots created from the subdivisions of a two-family dwelling, townhouse, or quadraminium having different minimum lot size requirements than the conventional base lots within the zoning district.

Lot width means the minimum horizontal distance between the side lot lines measured at right angles to the lot depth, at the front building setback line and also at the shoreline setback line if applicable. See figure of lot width diagram as follows:

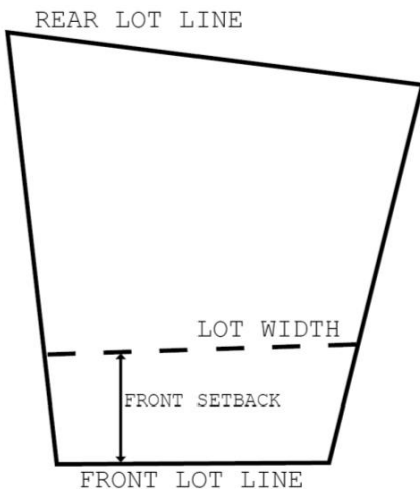


Figure 6. Lot Width

Measured distances means expressed in feet shall be the nearest tenth of a foot.

Medical and dental clinic means a structure intended for providing medical and dental examinations and service available to the public. This service is provided without overnight care available.

Minerals means soil, clay, stone, sand and gravel and other similar solid material or substance to be mined from natural deposits.

Mining means all or any part of the process involved in the extraction of minerals by removing the overburden and extracting directly from the mineral deposits thereby exposed.

Mobile (manufactured) home means any single-family dwelling transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis, with or without a permanent

foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, and complies with the manufactured home building code, M.S.A. ch. 327.

Model home means a home which is similar to others in a development and which is open to public inspection for the purpose of selling the other homes.

Motel/motor hotel means a building or group of detached, semi-detached or attached buildings containing guest rooms or units, with garage or parking space conveniently located to each unit, and which is designed, used or intended to be used primarily for the accommodation of transient guests.

Motor fuel station means a place where gasoline is stored only in underground tanks, kerosene or motor oil and lubricants or grease, for operation of automobiles, are retailed directly to the public on premises, and not including minor accessories and services for automobiles, but not including automobile major repairs and rebuilding.

Motor freight terminal (truck terminal) means a building in which freight brought by motor truck is assembled and sorted for routing in intrastate and interstate shipment.

Natural drainage system means all land surface areas which by nature of their contour configuration, collect, store and channel surface water runoff.

Natural obstruction means any rock, tree, gravel or analogous natural matter that is an obstruction and has been located within a waterbody, watercourse or wetland by a non-human cause.

Nonconforming building, structure or use means a building, structure or use which does not conform with the district regulations and development standards in which it is situated.

Nonconforming use means any preexisting structure, tree, natural growth, or land use which is inconsistent with the provisions of this article or an amendment hereto.

Nonconformity, legal, means a nonconforming building, structure, or use which was legally established under the applicable rules and regulations in effect at the time that the building, structure or use was established.

Nonprecision instrument runway means a runway having an existing or planned straight-in instrument approach procedure utilizing air navigation facilities with only horizontal guidance, and for which no precision approach facilities are planned or indicated on an approved planning document.

Normal highwater mark means a continuous mark of reference at an elevation where land and water meet for some period of record; is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

Nursing home (rest home) means a building having accommodations where care is provided for two or more invalids, infirmed, aged, convalescent or physically disabled persons, as defined by M.S.A. ch. 144A, that are not of the immediate family; but not including hospitals, clinics, sanitariums or similar institutions.

Obstruction (floodplain) means any storage of material or equipment, any dam, wall, wharf, embankment, levee, road, dike, pile, abutment, projection, excavation, channel rectification, culvert, building, wire, fence, stockpile, refuse, fill, deposit, clearing of trees or vegetation, structure or matter in, along, across, or projecting, in whole or in part, into any floodplain.

Off-street loading space means a space accessible from the street, alley or way, in a building or on the lot, for the use of trucks while loading or unloading merchandise or materials.

Open sales lot means any open land used or occupied for the purpose of buying, selling or renting merchandise and for the storing of same prior to sale.

Ordinary highwater level means the boundary of public waters and wetlands and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to

predominantly terrestrial. For watercourses, the ordinary highwater level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary highwater level is the operating elevation of the normal summer pool.

Outpatient care means medical examination or service available to the public in a clinic or hospital. This service is provided without overnight care and shall be considered a separate, independent, principal use when combined or operated in conjunction with a hospital.

Overburden means the earth, rock and other materials that lie above a natural deposit of mineral.

Parking ramp means an accessory structure designed and used for the storage of motor vehicles at, below, or above grade.

Parking space means an area, enclosed in the main building, in an accessory building, or unenclosed, sufficient in size to store one passenger vehicle, which has adequate access to a public street or alley and permitting satisfactory ingress and egress of an automobile.

Patio means a surfaced space used for outdoor recreation, relaxation or entertaining which does not extend more than 12 inches above the natural grade at any point.

Permitted use means a use which may be lawfully established in a particular district or districts, provided it conforms with all requirements, regulations, and performance standards (if any) of such districts.

Personal services means establishments that primarily engage in providing services generally involving the care of the person or person's possessions. Personal services may include, but are not limited to: barber shops, beauty salons, health and fitness studios, music schools, informational and instructional services, nail salons, tanning salons, body art (including tattooing), and portrait studios.

Planned means those proposed future airport developments that are so indicated on a planning document having the approval of the Federal Aviation Administration, the state department of transportation office of aeronautics, and the city.

Planned unit development means a type of development characterized by a unified site design for a number of commercial uses, dwelling units or dwelling sites on a parcel, whether for sale, rent, or lease, and also usually involving clustering of these units or sites to provide areas of common open space, density increases, and a mix of structure types and land uses. The term "planned unit development" may be organized and operated as condominiums, time-share condominiums, cooperatives, full fee ownerships, commercial enterprises, or any combination of these, or cluster subdivisions of dwelling units, residential condominiums, townhouses, apartment buildings, campgrounds, recreational vehicle parks, resorts, hotels, motels, and conversions of structures and land uses to these uses. A planned unit development may be established as a zoning district by ordinance, or as a special zoning approval, such as conditional use permit, by council resolution.

Principal use means the main use of land or buildings as distinguished from subordinate or accessory uses. A principal use may be either permitted or conditional.

Public uses means uses owned or operated by municipal, school districts, county, state, or other governmental units.

Public waters means any waters as defined by M.S.A. § 103G.005(15).

Quadraminium means a single structure which contains four separately owned dwelling units, all of which have individually separate entrances from the exterior of the structure.

Recreation field or building means an area of land, water, or any building in which amusement, recreation or athletic sports are provided for public or semi-public use, whether temporary or permanent, except a theatre, whether provision is made for the accommodation of an assembly or not. A golf course, arena, baseball park, stadium, circus or gymnasium is a recreation field or building for the purpose of this chapter.

Recreational vehicle means a motor home, travel trailer, boat, snowmobile, dirt bike, or other such mobile equipment including the trailer on which a recreational vehicle is kept and transported, which is intended for leisure time, recreational purposes.

Regional flood means a flood which is representative of large floods known to have occurred generally in the state and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year reoccurrence interval. The term "regional flood" is synonymous with the term "base flood" used in the flood insurance study.

Regulatory flood protection elevation means a point not less than one foot above the elevation of the floodplain, plus any increase in flood heights attributable to encroachments on the floodplain. It is the elevation to which uses regulated by this chapter are required to be elevated or floodproofed.

Restaurant means an establishment which serves food in or on non-disposable dishes to be consumed primarily while seated at tables or booths within the building.

Roofline means the top of the coping, or when the building has a pitched roof, as the intersection of the outside wall with the roof.

Runway means any existing or planned paved surface or turf covered area of the airport which is specifically designated and used or planned to be used for the landing or taking off of aircraft.

Satellite dish means a combination of:

- (1) Antenna or dish antenna whose purpose is to receive a communication or other signals from orbiting satellites and other extra-terrestrial sources;
- (2) A low-noise amplifier (LNA) which is situated at the focal point of the receiving component and whose purpose is to magnify and transfer signals; and
- (3) A coaxial cable whose purpose is to carry the signals into the interior of the building.

Satellite dish height means the height of the antenna or dish measured vertically from the highest point of the antenna or dish when positioned for operation, to the bottom of the base which supports the antenna.

Semi-public use means the use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.

Sensitive resource management means the preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding, or occurrence of flora or fauna in need of special protection.

Setback means the minimum horizontal distance between a building or sewage treatment system and lot line. Distances are to be measured from the most outwardly extended portion of the structure at ground level, except as provided hereinafter.

Sewage treatment system means a septic tank and soil absorption system or other individual or cluster type sewage treatment system.

Sewer system means pipelines or conduits, pumping stations, and force main, and all other constructions, devices, appliances, or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

Shopping center means an integrated grouping of commercial stores, under single ownership or control.

Shore impact zone means land located between the ordinary highwater level of a public water and a line parallel to it at a setback of 50 percent of the structure setback.

Shoreland means land located within the following distances from public water:

-
- (1) 1,000 feet from the ordinary highwater level of a lake, pond, or flowage; and
 - (2) 300 feet from a river or stream; or
 - (3) The landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater.

The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the commissioner.

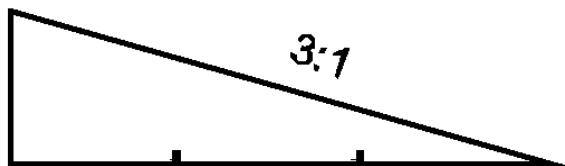
Shoreland dwelling unit within the shoreland area means any structure or portion of a structure, or other shelter designed as short- or long-term living quarters for one or more persons, including rental or time share accommodations such as motel, hotel, and resort rooms and cabins.

Shoreland residential planned unit development means a use in a shoreland district where the nature of residency is non-transient and the major or primary focus of the development is not service-oriented. For example, residential apartments, manufactured home parks, time-share condominiums, townhouses, cooperatives, and full fee ownership residences would be considered as residential planned unit developments.

Sign means the use of any words, numerals, figures, devices, or trademarks by which anything is made known such as are used to show an individual, firm, profession, or business, and are visible to the general public.

Significant historic site means any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the state register of historic sites, or is determined to be an unplatted cemetery that falls under the provisions M.S.A. § 307.08. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the state archaeologist or the director of the state historical society. All unplatted cemeteries are automatically considered to be significant historic sites.

Slope means the degree of deviation of a surface from the horizontal, usually expressed in percent or degrees or as a ratio.



Slope = 3:1 = 3 feet horizontal to 1 foot vertical

Figure 7. Slope

Steep slope means land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of these regulations. Where specific information is not available, steep slopes are lands having average slopes over 12 percent, as measured over horizontal distances of 50 feet or more, that are not bluffs.

Story means the three-dimensional area of a building including space from the upper surface of a floor and upper surface of floor next above, except that the topmost story shall be that portion of a building, between the upper surface of the topmost floor and the ceiling above. If the finished floor level within a basement or cellar, or unused underfloor space is more than six feet above grade as defined herein for more than 50 percent of the total perimeter or is more than 12 feet above grade as defined herein at any point, such basement, cellar, or unused underfloor space shall be considered a story. See figure of a story below:

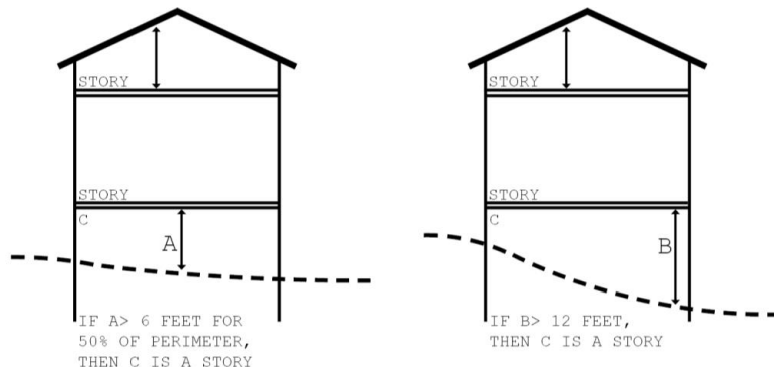


Figure 8. Story

Street frontage means the proximity of a parcel of land to one or more streets. An interior lot has one street frontage and a corner lot has two frontages. When a parcel has no direct abutting street frontage, its frontage shall be the segment of the parcel through which its primary access travels.

Structure means anything which is built, constructed or erected; an edifice or building of any kind; or any piece of work artificially built up or composed of parts joined together in some definite manner whether temporary or permanent in character.

Structure, public, means an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner which is owned, or rented and operated by a federal, state, or local government agency.

Surface water-oriented commercial use means the use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conductance of business. Marinas, resorts, and restaurants with transient docking facilities are examples of such use.

Toe of the bluff means the lower point of a 50-foot segment with an average slope exceeding 18 percent.

Top of the bluff means the higher point of a 50-foot segment with an average slope exceeding 18 percent.

Townhouse means a structure housing three or more dwelling units contiguous to each other only by the sharing of one common wall, such structures to be of the town or row houses type as contrasted to multiple apartment structures. No single structure shall contain in excess of eight dwelling units and each dwelling unit shall have separate and individual front and rear entrances.

Traverse ways, for the purpose of determining height limits as set forth in this article, shall be increased in height by 17 feet for interstate highways; 15 feet for all other public roadways; ten feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for private roads; 23 feet for railroads; and for waterways and all other traverse ways not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it.

Tree means any object of natural growth.

Usable open space means a required ground area or terrace area on a lot which is graded, developed, landscaped and equipped and intended and maintained for either active or passive recreation or both, available and accessible to and usable by all persons occupying a dwelling unit or rooming unit on the lot and their guests. Such areas shall be grassed and landscaped or covered only for a recreational purpose. Roofs, driveways and parking areas shall not constitute usable open space.

Use means the purpose or activity for which the land or building thereof is designated, arranged, or intended or for which it is occupied, utilized or maintained, and shall include the performance of such activity as defined by the performance standards of this chapter.

Utility runway means a runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight and less; and is less than 4,900 feet in length.

Variance means the waiving by board action of the literal provisions of this chapter in instances where their strict enforcement would cause practical difficulties in putting the property to a reasonable use because of physical circumstances unique to the individual property under consideration.

Vegetation means the sum total of plant life in some area; or a plant community with distinguishable characteristics.

Visual runway means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an approved planning document.

Water surfaces, for the purpose of this article, shall have the same meaning as land for the establishment of protected zones.

Waterbody means a body of water (lake, pond) or a depression of land or expanded part of a river, or an enclosed basin that holds water and surrounded by land.

Watercourse means a channel or depression through which water flows, such as rivers, streams, or creeks, and may flow year-round or intermittently.

Watershed means the area drained by the natural and artificial drainage system, bounded peripherally by a bridge or stretch of high land dividing drainage areas.

Wetlands means any area which meets the conditions and characteristics of M.S.A. ch. 103G.

Wind energy conservation system (WECS) means any device that is designed to convert wind power to another form of energy such as electricity or heat (also referred to by such common names as wind charger, wind turbine, and windmill).

Yard means an open space on the lot which is unoccupied by any building or structure and unobstructed from its lowest level to the sky. See figure of yards below:

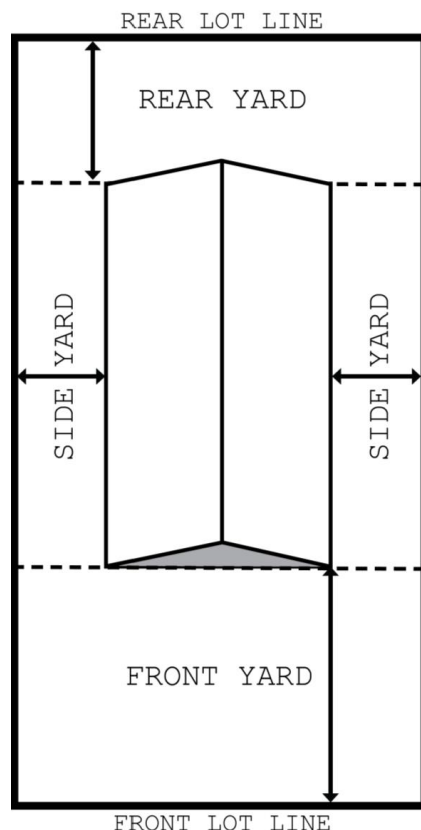


Figure 9. Yard

Yard, front, means that area extending along the full length of a lot between side lot lines from that portion of the lot bordering the public right-of-way to the front building line. In the case of a lot abutting one or more roads such as a corner lot or through lot, all yards fronting on a public street shall be treated as front yards for the purpose of applying zoning regulations, unless otherwise specified in this chapter. When a parcel has no direct street frontage, the front yard shall be that yard which lies between the building line and the street frontage.

Yard, rear, means a yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the principal building.

Yard, required, means that distance specified in the yard requirements pertaining to setbacks. The terms "setback" and "required yard" are used interchangeably.

Yard, side, means a yard between the side line of the lot and the nearest line of the principal building and extending between the front line of the building and the rear yard.

(Code 1985, § 11.02; Ord. of 10-5-2010, §§ I, III; Ord. No. 2021-4 , § 1(11.02), 7-19-2021)

Sec. 50-4. Relation to comprehensive municipal plan.

It is the policy of the city that the enforcement, amendment, and administration of this chapter be accomplished with due consideration of the recommendations contained in the comprehensive plan as developed and amended from time to time by the planning commission and the council. The council recognizes the comprehensive plan as the policy for regulating land use and development in accordance with the policies and

purposes herein set forth. When a policy or recommendation of the comprehensive plan is determined to be in conflict with a regulation in this chapter, the regulation in this chapter shall prevail.

(Code 1985, § 11.01(2))

Sec. 50-5. Conflicting provisions; minimum standards.

- (a) Where the conditions imposed by any provision of this chapter are either more or less restrictive than comparable conditions imposed by other provisions of this Code, rule or regulation of the city, this chapter, rule or regulation which imposes the more restrictive condition, standard, or requirement shall prevail.
- (b) In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety and welfare. The council may impose more extensive or rigorous standards where the council determines that such standards are necessary to protect the public health, safety, or welfare and promote the intent of this chapter.

(Code 1985, § 11.01(3), (4))

Sec. 50-6. Compliance required.

- (a) It is unlawful for any person to erect, convert, enlarge, reconstruct or alter any structure, or to use any structure or land for any purpose or in any manner which is not in conformity with the provisions of this chapter.
- (b) Except as herein provided, it is unlawful for any person to hereafter use or occupy any building, structure or premises that does not conform to the requirements of this chapter, and no building permit shall be granted unless in conformance with this chapter.

(Code 1985, § 11.01(5), (6))

Sec. 50-7. Signs.

Sign design and construction specifications are not addressed in this chapter. Signs shall be erected in conformance with the provisions of chapter 34.

(Code 1985, § 11.26)

Secs. 50-8—50-32. Reserved.

ARTICLE II. DISTRICTS AND DISTRICT REGULATIONS

DIVISION 1. GENERALLY

Sec. 50-33. Districts established.

The following zoning classifications are established within the city:

| <i>Residential Districts</i> | | |
|------------------------------|-----|-----------------------|
| | A-1 | Agricultural District |

(Supp. No. 2)

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| | | |
|-----------------------------|------|---|
| | R-R | Rural - Residential District |
| | R-1 | Residential - Single-family - Suburban District |
| | R-2 | Residential - Single-family - Urban District |
| | R-3 | Traditional Residential - Single- and Two-Family District |
| | R-4 | Residential - Townhouse, Quadraminium, Low Density Multiple-family District |
| | R-5 | Suburban Residential Multiple-Family District |
| | R-6 | Downtown Residential - High Density Multiple-family District |
| | R-7 | Residential - Special Purpose, High Density Zoning District |
| | R-MH | Residential - Manufactured Housing District |
| | R-B | Residential - Business Transitional District |
| | R-A | Rural Residential Transition District |
| <i>Business Districts</i> | | |
| | B-2 | Limited Business District |
| | B-3 | Highway Commercial District |
| | B-4 | General Business District |
| | B-5 | Central Business District |
| | B-6 | Health Care Facility District |
| | B-W | Business - Warehousing District |
| | BC | Business Campus District |
| <i>Industrial Districts</i> | | |
| | I-1 | Light Industrial District |
| | I-2 | Heavy Industrial District |
| | I-4 | Airport Industrial District |
| <i>Special Districts</i> | | |
| | PUD | Planned Unit Development District |
| | P/OS | Parks and Open Space Zoning District |
| | S | Shoreland Management Overlay District |
| | F | Floodplain Management Overlay District |

(Code 1985, § 11.40(1))

Sec. 50-34. District boundaries.

- (a) *Generally.* Zoning district boundary lines generally follow lot lines, railroad right-of-way lines, the center of watercourses or the corporate limit lines, all as they existed upon the effective date of the ordinance from which this chapter is derived.
- (b) *Appeal regarding exact location of boundary.* Appeals concerning the exact location of a zoning district boundary line shall be heard by the council serving as the board of adjustment and appeals.

-
- (c) *Vacation of right-of-way does not affect boundary.* When any street, alley or public right-of-way vacated by official action of the city, the zoning district abutting the centerline of the alley or other public right-of-way shall not be affected by such proceeding.

(Code 1985, § 11.40(2))

Sec. 50-35. Zoning map.

The location and boundaries of the districts established in this chapter are set forth on the city zoning map on file with the city clerk. The zoning map and all the notations, references and other information shown thereon shall have the same force and effect as if fully set forth herein and thereby made a part of this chapter by reference.

(Code 1985, § 11.40(3))

Sec. 50-36. Annexed territory.

Annexed territory shall be in the A-1 district unless special action is taken to place it in another district.

(Code 1985, § 11.40(4))

Secs. 50-37—50-58. Reserved.

DIVISION 2. SPECIFIC DISTRICTS

Sec. 50-59. A-1 Agricultural District.

- (a) *Purpose.* The A-1 Agricultural District is intended to provide a district which will allow suitable areas of the city to be retained and utilized for low density residential, open space or agricultural uses, prevent rapid urbanization and provide economy in public expenditures for public utilities and service.
- (b) *Permitted uses.* The following are permitted uses in an A-1 district:
- (1) Farming and agricultural related buildings and structures subject to state pollution control standards, but not including commercial feed lots or other commercial operations.
 - (2) Public parks, playgrounds, recreational areas, wildlife areas and game refuges.
 - (3) Nurseries, greenhouses, tree farms, and landscape material operations (not including retail sales).
 - (4) Single-family dwellings.
 - (5) Essential services.
 - (6) Stands for the sale of agricultural products, provided the products are primarily raised on the premises.
 - (7) Airports and directly related facilities.
- (c) *Accessory uses.* The following are permitted accessory uses in an A-1 district:
- (1) Operation and storage of such vehicles, equipment and machinery which are incidental to permitted or conditional uses allowed in this district.
 - (2) The boarding or renting of rooms to not more than two persons.

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- (3) Living quarters of persons employed on the premises.
 - (4) Home occupations.
 - (5) Recreational vehicles and equipment.
 - (6) Non-commercial greenhouses and conservatories.
 - (7) Swimming pools, tennis courts and other recreational facilities which are operated for the enjoyment and convenience of the residents of the principal use and their guests.
 - (8) Tool houses, sheds and similar buildings for storage of domestic supplies and noncommercial recreational equipment.
 - (9) Private garages, parking spaces and car ports for licensed and operable passenger cars and trucks.
- (d) *Conditional uses.* The following are conditional uses in an A-1 district (requires a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter):
- (1) Governmental and public related utility buildings and structures necessary for the health, safety and general welfare of the city, provided that:
 - a. When abutting a residential use in a residential use district, the property is screened and landscaped in compliance with section 50-358.
 - b. The provisions of section 50-699 are considered and satisfactorily met.
 - (2) Public or semi-public recreational buildings and neighborhood or community centers; public and private educational institutes limited to elementary, junior high and senior high schools; and religious institutions such as churches, chapels, temples and synagogues, provided that:
 - a. Side yards shall be double that required for the district, but no greater than 30 feet.
 - b. Adequate screening from abutting residential uses and landscaping is provided in compliance with section 50-358.
 - c. Adequate off-street parking and access is provided on the site or on lots directly abutting directly across a public street or alley to the principal use in compliance with article V, division 2 of this chapter and that such parking is adequately screened and landscaped from surrounding and abutting residential uses in compliance with section 50-358.
 - d. Adequate off-street loading and service entrances are provided and regulated where applicable by article V, division 3 of this chapter.
 - e. The provisions of section 50-699 are considered and satisfactorily met.
 - (3) Commercial recreational areas including golf course and country clubs, swimming pools, ice arenas and similar facilities, provided that:
 - a. The principal use, function or activity is recreation in character.
 - b. Not more than 40 percent of the land area of the site be covered by buildings or structures.
 - c. When abutting a residential use and a residential use district, the property is screened and landscaped in compliance with section 50-358.
 - d. The land area of the property containing such use or activity meets the minimum established for the district.
 - e. The provisions of section 50-699 are considered and satisfactorily met.

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- (4) Commercial riding stables, dog kennels, animal hospitals with overnight care and similar uses, provided that:
- a. Any building in which animals are kept, whether roofed shelter or enclosed structure, shall be located a distance of 100 feet or more from any lot line.
 - b. The animals shall, at a minimum, be kept in an enclosed pen or corral of sufficient height and strength to retain such animals. The pen or corral may not be located closer than 100 feet from a lot line.
 - c. The provisions of Minn. R. 6244.0900 are complied with.
 - d. All other applicable state and local regulations pertaining to nuisance, health and safety conditions, etc., are complied with.
 - e. The provisions of section 50-699 are considered and satisfactorily met.
- (5) Cemeteries, provided that:
- a. The site accesses on a minor arterial.
 - b. The site is landscaped in accordance with section 50-358.
 - c. The provisions of section 50-699 are considered and satisfactorily met.
- (6) Solar energy generation as a principal use, provided that:
- a. The solar farm is situated in a location that will not likely impede the normal urban development of the community or the logical extension of utilities to other urban development.
 - b. The facility will occupy no more than 40 acres in any contiguous parcels of land.
 - c. The facility will be constructed using landscaping and screening, as well the most effective technologies to avoid glare or other visual impacts on surrounding property.
 - d. No such principal solar energy generation use shall be located within one mile of any other similar facility.
 - e. The owner of the property and the operator of the facility shall enter into an agreement with the city that, at such time that municipal sewer and water are extended and available to the property, the property owner and operator will agree to do one of the following:
 1. Pay the property's normal share of utility extension costs, including trunk fees, as well as the costs of extending such utilities through or around the property to adjacent property for future connection to other lands; or
 2. Cease operation of the facility within two years of such utility extension, clear the property of the solar generating equipment, and restore the property to a condition that will accommodate the development of an urban use.
- (7) Farm buildings within 300 feet of an existing residence or residential platted lot, provided that the provisions of section 50-699 are considered and satisfactorily met.
- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in an A-1 District subject to additional requirements, exceptions and modifications set forth in this chapter:
- (1) Lot area: 40 acres.
 - (2) Lot width: 600 feet.
 - (3) Setbacks:

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- a. Front yards: Not less than 50 feet.
 - b. Side yards: Not less than 20 feet on each side nor less than 50 feet on the side yard abutting a public right-of-way.
 - c. Rear yards: 30 feet.

(Code 1985, § 11.41)

Sec. 50-60. R-R Rural Residential District.

- (a) *Purpose.* The purpose of the R-R Rural Residential District is to provide for large lots, low density single-family detached residential dwelling units and directly related, complementary uses in areas of the city containing highly unique natural features and amenities.
- (b) *Permitted uses.* The following are permitted uses in an R-R district:
 - (1) Single-family detached dwellings.
 - (2) Public parks and playgrounds.
 - (3) Essential services.
- (c) *Accessory uses.* The following are permitted accessory uses in an R-R district:
 - (1) Private garages, parking spaces and car ports for licensed and operable passenger cars and trucks not to exceed a gross weight of 12,000 pounds, as regulated by section 50-259(f). Private garages are intended for use to store the private passenger vehicles of the family or families resident upon the premises, and in which no business service or industry is carried on. Such garage shall not be used for the storage of more than one commercial vehicle owned or operated by a resident per dwelling unit. Garages accessory to single-family homes shall be designed to accommodate expansion to a third stall, if not initially constructed as such.
 - (2) Recreational vehicles and equipment.
 - (3) Home occupations.
 - (4) Non-commercial greenhouses and conservatories.
 - (5) Swimming pool, tennis courts and other recreational facilities which are operated for the enjoyment and convenience of the residents of the principal use and their guests.
 - (6) Tool houses, sheds and similar buildings for storage of domestic supplies and noncommercial recreational equipment.
 - (7) Boarding or renting of rooms to not more than one person.
- (d) *Conditional uses.* The following are conditional uses in an R-R district which require a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter:
 - (1) Public or semi-public recreational buildings and neighborhood or community centers; public and private educational institutions limited to elementary, junior high and senior high schools; and religious institutions such as churches, chapels, temples and synagogues, provided that:
 - a. Side yards shall be double that required for the district, but no greater than 30 feet.
 - b. Adequate screening from abutting residential uses and landscaping is provided in compliance with section 50-358.

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- c. Adequate off-street parking and access is provided on the site or on lots directly abutting directly across a public street or alley to the principal use in compliance with article V, division 2 of this chapter and that such parking is adequately screened and landscaped from surrounding and abutting residential uses in compliance with section 50-358.
 - d. Adequate off-street loading and service entrances are provided and regulated where applicable by article V, division 3 of this chapter.
 - e. The provisions of section 50-699 are considered and satisfactorily met.
 - (2) Governmental and public regulated utility buildings and structures necessary for the health, safety and general welfare of the city, provided that:
 - a. Compatibility with the surrounding neighborhood is maintained and required setbacks and side yard requirements are met.
 - b. Equipment is completed enclosed in a permanent structure with no outside storage.
 - c. Adequate screening from neighboring uses and landscaping is provided in compliance with section 50-358.
 - d. The provisions of section 50-699 are considered and satisfactorily met.
 - (3) Residential planned unit development, as regulated by article III of this chapter.
- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in an R-R district subject to additional requirements, exceptions and modifications set forth in this chapter:
- (1) Lot area.
 - a. Interior: 40,000 square feet.
 - b. Corner: 40,000 square feet.
 - (2) Lot width.
 - a. Interior: 150 feet.
 - b. Corner: 150 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 40 feet.
 - b. Side yards: Not less than 20 feet from the adjacent lot, nor less than 40 feet on the side yard abutting a public right-of-way.
 - c. Rear yards: 30 feet.

(Code 1985, § 11.42)

Sec. 50-61. R-1 Residential Single-Family Suburban District.

- (a) *Purpose.* The purpose of the R-1 Residential Single-family Suburban District is to provide for suburban density single-family detached residential dwelling units and directly related, complementary uses.
- (b) *Permitted uses.* All permitted uses allowed in an R-R district are permitted in an R-1 district.
- (c) *Accessory uses.* All permitted accessory uses allowed in an R-R district are permitted in an R-1 district.
- (d) *Conditional uses.* The following are conditional uses in an R-1 district which requires a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter:

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- (1) All conditional uses allowed in an R-R district are permitted in an R-R district.
 - (2) Bed and breakfast facilities. Bed and breakfast may be allowed by conditional use permit as an accessory use to the principal use as a single-family home, subject to the following conditions. It is the intent of this subsection that a bed and breakfast facility is clearly incidental to the single-family residential use, and that the residential character of the neighborhood is retained. Such facilities may not be approved if it is found that traffic, activity, lights, noise, or other factors significantly alter residential character, and which cannot be adequately mitigated through reasonable conditions:
 - a. Facilities shall be operated by the owner-occupant of the residential property on which the bed and breakfast is proposed.
 - b. All bed and breakfast units shall be established within the principal structure.
 - c. A maximum of three bed and breakfast units, in addition to the residential occupant, shall be allowed within a single structure.
 - d. The facility shall have a state issued license for lodging and food service, and comply with and maintain all health, safety, building, and fire codes as may be required or applicable.
 - e. Not more than the equivalent of one full-time person shall be employed by the bed and breakfast facility who is not a resident of the property.
 - f. Dining and other facilities shall not be opened to the public but shall be used exclusively by the residents and registered guests of the facility.
 - g. A floor plan shall be submitted showing that the principal structure has a minimum size of 1,800 square feet of living area and shall show any proposed building alterations necessary to accommodate the bed and breakfast use.
 - h. The parcel shall be no less than 100 feet in lot width, and no less than 15,000 square feet in lot area.
 - i. A site and landscaping plan shall be submitted illustrating the proposed parking area for at least three spaces for each residential unit and one space for each licensed bed and breakfast unit. No bed and breakfast parking shall be allowed within the required front or side yards of the parcel. These parking areas shall be improved with asphalt and screened with landscaping but shall be exempt from other commercial parking requirements of this chapter.
 - j. One nameplate sign may be allowed identifying the bed and breakfast facility of not more than two square feet in area, attached to the principal structure. The sign shall be designed and constructed of materials complementary to the principal structure and may not be illuminated.
- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in an R-1 district subject to additional requirements, exceptions and modifications set forth in this chapter:
- (1) Lot area: 12,000 square feet.
 - (2) Lot width, interior: 85 feet. Corner: 100 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 30 feet.
 - b. Side yards:
 1. Interior lots: Not less than 15 feet each, except a side yard where there is an attached garage may be reduced to five feet.
 2. Corner lot: Not less than 20 feet on the side yard abutting a public street.

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- c. Rear yards: 30 feet.
- (4) Impervious surface: No more than 35 percent.
- (f) *Interim use permits for craft retreat facilities.* Craft retreat facilities may be allowed by interim use permit as the principal use in a single-family home structure, subject to the following conditions. It is the intent of this subsection that a craft retreat facility will be operated in such a way that the residential character of the neighborhood is retained. Such facilities may not be approved if it is found that traffic, activity, lights, noise, or other factors significantly alter residential character, and which cannot be adequately mitigated through reasonable conditions:
- (1) All craft retreat facility units shall be established within the principal structure.
 - (2) A maximum of 12 occupants shall occupy a craft retreat facility at any one time.
 - (3) Craft retreat facilities shall be rented to only one group, participating together in a common hobby, at any one time.
 - (4) No common group shall occupy any craft retreat facilities for more than four consecutive days.
 - (5) The facility shall have a state issued license for lodging, and comply with and maintain all health, safety, building, and fire codes as may be required or applicable.
 - (6) The owner of a craft retreat facility shall own the property on which the retreat facility is located, and further shall reside on a parcel no more than 500 feet from the property on which the craft retreat facility is located.
 - (7) Not more than the equivalent of one full-time person shall be employed by the craft retreat facility who is not a resident of the owner's property.
 - (8) Dining and other facilities shall not be opened to the public but shall be used exclusively by the members of the common group of registered guests of the facility.
 - (9) A floor plan shall be submitted showing that the principal structure has a minimum size of 1,800 square feet of living area and shall show any proposed building alterations necessary to accommodate the craft retreat use.
 - (10) No alterations may be made to the principal or accessory structures on the subject property that would have the effect of interfering with putting the property to use as a single-family home upon expiration of the craft retreat facility use.
 - (11) To accommodate adequate yard and parking space, the parcel shall be no less than 85 feet in lot width, and no less than 12,000 square feet in lot area.
 - (12) A site and landscaping plan shall be submitted illustrating the proposed parking area for at least one staff parking space, plus one space for each two persons for whom retreat capacity is provided. No more than two of the required spaces shall be allowed within the required front or side yards of the parcel. All parking areas shall be improved with pavement (asphalt, concrete, or pavers) and screened with landscaping, but shall be exempt from other commercial parking requirements of this chapter.
 - (13) One nameplate sign may be allowed identifying the craft retreat facility of not more than two square feet in area, attached to the principal structure. The sign shall be designed and constructed of materials complementary to the principal structure and may not be illuminated.
 - (14) Craft retreat facilities shall require a separate business license from the city, renewable on an annual basis. The city shall issue licenses such that no more than three such licenses are in effect at any one time.

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- (15) The applicants shall enter into an interim use permit development agreement with the city, providing for a date of termination of the use which is no more than five years from the date of approval by the city council. Requests for subsequent interim use permits shall be subject to full processing requirements of this chapter. Consideration of subsequent interim use permits shall take into account compliance with licensing terms and pattern of complaints, where applicable.
 - (16) If at any time, a license for the operation of a craft retreat facility is revoked, such event shall result in concurrent revocation of the interim use permit.

(Code 1985, § 11.43)

Sec. 50-62. R-2 Residential Single-Family Urban District.

- (a) *Purpose.* The purpose of the R-2 Residential Single-family Urban District is to provide for urban density single-family detached residential dwelling units and directly related, complementary uses.
- (b) *Permitted uses.* All permitted uses allowed in an R-1 district are permitted in an R-2 district.
- (c) *Accessory uses.* All permitted accessory uses allowed in an R-2 district are permitted accessory uses allowed in an R-1 district.
- (d) *Conditional uses.* Conditional uses in an R-2 district require a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter. Conditional uses allowed in an R-R district are conditional uses allowed in an R-1 district.
- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in an R-2 district subject to additional requirements, exceptions and modifications set forth in this chapter:
 - (1) Lot area: 8,000 square feet.
 - (2) Lot width: 75 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 30 feet.
 - b. Side yards:
 1. Interior lot: Not less than ten feet each except that a side yard containing an attached garage may be reduced to five feet.
 2. Corner lot: Not less than 20 feet on the side yard abutting a public street.
 - c. Rear yards: 25 feet.
 - (4) Impervious surface: No more than 35 percent.

(Code 1985, § 11.44)

Sec. 50-63. R-3 Traditional Residential Single- and Two-Family District.

- (a) *Purpose.* The purpose of the R-3 Transitional Residential Single- and Two-Family District is to provide for low to moderate density one- and two-unit dwellings and directly related, complementary uses in the traditional residential areas of the city, particularly near and around the downtown area.
- (b) *Permitted uses.* The following are permitted uses in an R-3 district:
 - (1) All permitted uses allowed in an R-2 district are permitted in an R-3 district.

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- (2) Two-family dwelling units.
 - (c) *Accessory uses.* All permitted accessory uses allowed in an R-2 district are permitted in an R-3 district.
 - (d) *Conditional uses.* Conditional uses in an R-3 district require a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter. Conditional uses allowed in an R-2 district are conditional uses allowed in an R-3 district.
 - (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in an R-3 district subject to additional requirements, exceptions and modifications set forth in this chapter:
 - (1) Lot area:
 - a. Single-family: 8,000 square feet.
 - b. Two-family: 10,500 square feet.
 - (2) Lot width:
 - a. Single-family: 60 feet.
 - b. Two-family: 80 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 20 feet.
 - b. Side yards: Not less than five feet from each adjacent lot, nor less than 15 feet on the side yard abutting a public right-of-way.
 - c. Rear yards: 30 feet for principal buildings, and five feet for accessory buildings. Garages on alleys shall comply with the requirements of article V, division 2 of this chapter.
 - (4) Impervious surface: No more than 45 percent.
- (Code 1985, § 11.45)

Sec. 50-64. R-4 Residential Townhouse, Quadraminium and Low-Density Multiple-Family District.

- (a) *Purpose.* The purpose of the R-4 Residential Townhouse, Quadraminium and Low-Density Multiple-Family district is to provide for low to moderate density through the mixture of one and two unit and medium density dwellings and directly related, complementary uses.
- (b) *Permitted uses.* The following are permitted uses in an R-4 district:
 - (1) Two-family dwellings.
 - (2) Triplex and fourplex multiple-family units.
 - (3) Townhouses and quadraminiums.
- (c) *Accessory uses.* The following are permitted accessory uses in an R-4 district, as may be regulated in article IV; article V, division 2; article VI, division 2 of this chapter:
 - (1) Private garages, parking spaces and car ports for licensed and operable passenger cars and trucks not to exceed a gross weight of 12,000 pounds, as regulated by section 50-259(f). Private garages are intended for use to store the private passenger vehicles of the family or families resident upon the premises, and in which no business service or industry is carried on. Such garage shall not be used for the storage of more than one commercial vehicle owned or operated by a resident per dwelling unit.

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- Such garage shall not be used for the storage of more than one commercial vehicle owned or operated by a resident per dwelling unit.
- (2) Double bungalows, quadraminium and townhouse units which do not meet the minimum first floor area requirements as provided in section 50-196, subject to the following conditions being met:
 - a. The units are otherwise permitted uses in the district.
 - b. The units are designed so as to provide for, at minimum, a total of 130 percent of the area prescribed in section 50-196, on more than one floor or level.
 - c. The units may not be further subdivided.
 - d. The units meet all local building codes and FHA construction guidelines.
 - e. Compliance with procedural requirements for conditional uses in article XIII, division 3 of this chapter.
 - (3) Recreational vehicles and equipment.
 - (4) Noncommercial greenhouses and conservatories.
 - (5) Swimming pool, tennis courts and other recreational facilities which are operated for the enjoyment and convenience of the residents of the principal use and their guests.
 - (6) Tool houses, sheds and similar buildings for storage of domestic supplies and noncommercial recreational equipment.
 - (7) Boarding or renting of rooms to not more than one person.
 - (d) *Conditional uses.* The following are conditional uses in an R-4 district which requires a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter:
 - (1) All conditional uses subject to the same conditions as allowed in an R-3 district with the exception of accessory apartments.
 - (2) Single-family dwellings as part of a townhouse plat and association developed as a planned unit development.
 - (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in an R-4 district subject to additional requirements, exceptions and modifications set forth in this chapter:
 - (1) Lot area: 15,000 square feet.
 - (2) Lot width: 100 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 30 feet.
 - b. Side yards: Not less than ten feet from each adjacent lot, nor less than 20 feet on the side yard abutting a public right-of-way.
 - c. Rear yards: 30 feet.
 - (4) Impervious surface: No more than 45 percent.

(Code 1985, § 11.46)

Sec. 50-65. R-5 Suburban Residential Multiple-Family District.

- (a) *Purpose.* The purpose of the R-5 Suburban Residential Multiple-Family District is to provide for high density housing in multiple family structures and complementary uses. The R-5 district is intended to encourage high-quality and high-amenity multiple-family development in appropriate locations around the community with exposure and access to major roadways and commercial facilities.
- (b) *Permitted uses.* The following are permitted uses in an R-5 district:
 - (1) Multiple family dwelling structures.
 - (2) Public and private parks and playgrounds.
 - (3) Essential services.
 - (4) Multiple family dwelling structures containing eight or less dwelling units.
 - (5) Public parks and playgrounds.
 - (6) Essential services.
- (c) *Accessory uses.* The following are permitted accessory uses in an R-5 district:
 - (1) All permitted accessory uses allowed in an R-4 district are permitted accessory uses in an R-5 district.
 - (2) Off-street loading.
- (d) *Conditional uses.* Residential planned unit developments are conditional uses in an R-5 district which requires a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter.
- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in an R-5 district subject to additional requirements, exceptions and modifications set forth in this chapter:
 - (1) Lot area: Two acres.
 - (2) Lot width: 200 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 70 feet.
 - b. Side yards: Not less than 40 feet on any one side yard nor less than 70 feet on the side yard abutting a public right-of-way.
 - c. Rear yards: 30 feet.
 - (4) Impervious surface: 35 percent.
- (f) *Additional development standards in the R-5 district.*
 - (1) *Parking areas.*
 - a. No front yard shall be occupied by parking areas that cover more than 50 percent of the space between the street and the front building line.
 - b. Parking and circulation lanes shall be set back from the street no less than 25 feet.
 - c. Parking spaces accessory to the building shall include no fewer than one covered space per dwelling unit.
 - d. Parking areas accessory to the building shall include no more than 1.1 open, uncovered parking spaces per unit.

(2) *Landscaping.*

- a. Required landscaping shall include no fewer than one overstory tree per each 40 feet of perimeter lot line, plus one ornamental tree for each 3,000 square feet of gross lot area, plus one shrub per each 500 square feet of gross lot area.
- b. Landscaping shall focus on the space between the buildings and the public street to present a park-like appearance from neighboring areas.
- c. Where the property abuts residential areas of lesser density zoning, the project shall include a landscaping buffer that screens parking and circulation areas from view.

(3) *Building architecture.*

- a. Buildings shall incorporate extensive use of stone and brick in the design.
- b. Buildings shall incorporate substantial variation in the roofline to avoid the impression of a large monolithic structure, including variation in roof ridge lines, gables, and similar features.
- c. Buildings shall incorporate extensive variation in the plane of all walls, utilizing articulation in wall location, balconies, and other features.

(4) *Density.* The allowable density, as expressed in lot area per unit, in the R-5 zoning district shall be 2,500 square feet per unit. This density may be increased by conditional use permit where the city finds that the proposed project meets all other minimum standards of the district and this chapter and demonstrates other substantive amenities and improvements to justify the additional density. No such density increase may reduce lot area per unit below 1,500 square feet per unit in the R-5 district.

(Code 1985, § 11.47)

Sec. 50-66. R-6 Downtown Residential High-Density Multiple-Family District.

- (a) *Purpose.* The purpose of the R-6 Downtown Residential High-Density Multiple-Family District is to provide for high density residential uses, and directly related uses, in and around the central business district, in support of the traditional commercial areas.
- (b) *Permitted uses.* The following are permitted uses in an R-6 district:
 - (1) All permitted uses allowed in an R-5 district are permitted uses allowed in an R-6 district.
 - (2) Multiple family dwelling structures containing more than eight dwelling units.
- (c) *Accessory uses.* All permitted accessory uses as allowed in an R-5 district are permitted accessory uses allowed in R-6 district.
- (d) *Conditional uses.* Conditional uses in an R-6 district require a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter. Conditional uses allowed in an R-5 district are conditional uses allowed in an R-6 district.
- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in an R-6 district subject to additional requirements, exceptions and modifications set forth in this chapter:
 - (1) Lot area: 15,000 square feet.
 - (2) Lot width: 100 feet.
 - (3) Setbacks:
 - a. Front yards: 30 feet.

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- b. Side yards: Not less than 15 feet on any one side, nor less than 30 feet on the side yard abutting the major street.
 - c. Rear yards: 30 feet.
 - (4) Impervious surface: 75 percent.
 - (5) Density. The allowable density, as expressed in lot area per unit, in the R-6 zoning district shall be 2,500 square feet per unit. This density may be increased by conditional use permit where the city finds that the proposed project meets all other minimum standards of the district and this chapter and demonstrates other substantive amenities and improvements to justify the additional density. No such density increase may reduce lot area per unit below 1,250 square feet per unit in the R-6 district.

(Code 1985, § 11.48)

Sec. 50-67. R-7 Residential Special Purpose, High Density Zoning District.

- (a) *Purpose.* The R-7 Residential Special Purpose High Density Zoning District is intended to provide a district for high density multiple-family housing and special purpose residential dwellings.
- (b) *Permitted uses.* All permitted uses allowed within an R-6 district are allowed within an R-7 district.
- (c) *Accessory uses.* All permitted accessory uses allowed within an R-6 district are permitted accessory uses allowed within an R-7 district.
- (d) *Conditional uses.* The following are conditional uses in an R-7 district which requires a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter:
 - (1) All conditional uses, subject to the same conditions, as allowed in an R-6 district, except single-family detached dwellings.
 - (2) Nursing homes and similar group housing, but not including hospitals, sanitariums or similar institutions, provided that:
 - a. Provision be made on the site for adequate open space and recreational areas to properly serve the residences of the facility as determined by the council.
 - b. Only the rear yard shall be used for play or recreational areas. The area shall be fenced and controlled and screened in compliance with section 50-358.
 - c. The site shall be served by an arterial or collector street of sufficient capacity to accommodate traffic which will be generated.
 - d. All signing and informational or visual communication devices shall be in compliance with the provisions of chapter 34.
 - e. All state laws and statutes governing such use are strictly adhered to and all required operating permits are secured.
 - f. Adequate off-street parking is provided in compliance with article V, division 2 of this chapter.
 - g. One off-street loading space in compliance with article V, division 3 of this chapter is provided.
 - h. The provisions of section 50-699 are considered and satisfactorily met.
 - i. Side yards shall be screened in compliance with section 50-358.
 - (3) Elderly (senior citizen) housing, provided that:
 - a. Not more than ten percent of the occupants may be persons 55 years of age or under.

- b. To continue to qualify for the elderly housing classification, the owner or agency shall annually file with the city administrator and the zoning administrator a certified copy of a monthly resume of occupants of such a multiple dwelling, listing the number of tenants by age and clearly identifying and setting forth the relationship of all occupants 60 years of age or under to qualified tenants, or to the building.
 - c. There is adequate off-street parking in compliance with article V, division 2 of this chapter.
 - d. One off-street loading space in compliance with article V, division 3 of this chapter.
 - e. Parking areas are screened and landscaped from view of surrounding and abutting residential districts in compliance with section 50-358.
 - f. All signing and informational or visual communication devices shall comply with the provisions of chapter 34.
 - g. The principal use structure is in compliance with the state uniform building code.
 - h. Elevator service is provided to each floor level above ground floor.
 - i. Usable open space, as defined in section 50-3, at a minimum is equal to 20 percent of the gross lot area.
 - j. The provisions of section 50-699 are considered and satisfactorily met.
- (4) Apartment density bonus. Except for elderly housing, a maximum of 25 percent reduction in square feet of lot area per unit for multiple family dwellings of ten units or more as required in section 50-196(b) based upon the following bonus features and square foot reductions:

| <i>Bonus Feature</i> | <i>Square Foot Reduction Per Unit</i> |
|---|---------------------------------------|
| Type two construction | 125 |
| Elevator serving each floor | 75 |
| Two-thirds of the required fee free parking underground or within the principal structure (not including attached or detached garages) | 175 |
| Indoor recreation and social rooms equal to 25 square feet per unit or 750 square feet total, whichever is greater | 50 |
| Major outdoor recreational facilities such as swimming pools, tennis courts or similar facilities requiring a substantial investment equaling at minimum five percent of the construction cost of the principal structure | 75 |

- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in an R-7 district subject to additional requirements, exceptions and modifications set forth in this chapter:
- (1) Lot area: 15,000 square feet.
 - (2) Lot width: 100 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 30 feet.

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- b. Side yards: Not less than 15 feet on any one side, nor less than 30 feet on the side yard abutting the major street.
 - c. Rear yards: 30 feet.
- (4) Impervious surface: 75 percent.

(Code 1985, § 11.49)

Sec. 50-68. R-MH Manufactured Housing Residential District.

- (a) *Purpose.* The purpose of an R-MH Manufactured Housing Residential District is to provide a separate district for manufactured housing parks, distinct from other residential areas.
- (b) *Permitted uses.* Single-family detached manufactured housing units are permitted uses in an R-MH district.
- (c) *Accessory uses.* Any accessory use permitted in an R-2 district are permitted accessory uses in an R-MH district
- (d) *Conditional uses.* Conditional uses in an R-MH district require a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter. All conditional uses allowed in an R-2 district, except farm buildings, are allowed conditional uses in R-MH district.
- (e) *Design/operational standards for manufactured housing.*
 - (1) *General provisions.*
 - a. All land area shall be:
 - 1. Adequately drained.
 - 2. Landscaped to control dust.
 - 3. Clean and free from refuse, garbage, rubbish or debris.
 - b. No tents shall be used for other than recreational purposes in a manufactured housing park.
 - c. There shall not be outdoor camping anywhere in a manufactured housing park.
 - d. Access to manufactured housing parks shall be as approved by the city.
 - e. All structures (fences, storage, cabana, etc.) shall require a building permit from the building official.
 - f. The area beneath a manufactured housing unit shall be enclosed except that such enclosure must have access for inspection.
 - g. Laundry and clothing shall be hung out to dry only on lines located in city approved areas established and maintained exclusively for that purpose, as identified on the manufactured housing park site plan.
 - h. A manufactured housing park shall have an adequate central community building with the following features:
 - 1. Laundry drying areas and machines.
 - 2. Laundry washing machines.
 - 3. Public toilets and lavatories.
 - 4. Storm shelter.

Such buildings shall have adequate heating in all areas and be maintained in a safe, clean and sanitary condition.

(2) *Site plan requirements.*

- a. Legal description and size in square feet of the proposed manufactured housing park.
- b. Location and size of all manufactured housing unit sites, dead storage areas, recreation areas, laundry drying areas, roadways, parking sites, and all setback dimensions (parking spaces, exact mobile home sites, etc.).
- c. Detailed landscaping plans and specifications.
- d. Location and width of sidewalks.
- e. Plans for sanitary sewage disposal, surface drainage, water systems, underground electrical service and gas service.
- f. Location and size of all streets abutting the manufactured housing park and all driveways from such streets to the manufactured housing park.
- g. Road construction plans and specifications.
- h. Plans for any and all structures.
- i. Such other information as required or implied by these manufactured park standards or requested by public officials.
- j. Name and address of developer.
- k. Description of the method of disposing of garbage and refuse.
- l. Detailed description of maintenance procedures and grounds supervision.
- m. Details as to whether all of the area will be developed a portion at a time.

(3) *Design standards.*

- a. *Park size.* The minimum area required for a manufactured housing park designation shall be five acres.
- b. *Individual manufactured housing site (homes 14 feet wide or less).*
 1. Each manufactured housing site shall contain at least 5,000 square feet of land area for the exclusive use of the occupant with a width of no less than 50 feet and a depth of no less than 100 feet.
 2. Each manufactured housing site shall have frontage on an approved roadway and the corner of each manufactured home shall be marked and each site shall be numbered:
- c. *Individual home sites (homes in excess of 14 feet, but less than 18 feet in width).*
 1. Each manufactured housing site shall contain at least 6,050 square feet of land area for the exclusive use of the occupants having a width of no less than 55 feet and a depth of no less than 110 feet.
 2. Each manufactured housing site shall have frontage on an approved roadway and the corner of each manufactured home site shall be marked and each site shall be numbered.
- d. *Individual manufactured housing sites (homes over 18 feet in width).*

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1. Each manufactured housing site shall contain at least 6,500 square feet of land area for the exclusive use of the occupant with a width of no less than 65 feet and a depth of no less than 100 feet.
 2. Each manufactured housing site shall have frontage on an approved roadway and the corner of each manufactured home site shall be marked and each site shall be numbered.
- e. *Individual manufactured housing unit site setbacks.*
1. In manufactured housing parks existing prior to January 1, 1985, no unit shall be parked closer than ten feet to its side lot lines nor closer than 20 feet to its front lot line or within ten feet of the rear lot line.
 2. In manufactured housing parks created after January 1, 1985, no unit shall be parked closer than ten feet to its side lot lines nor closer than 30 feet to its front lot line, or within ten feet of its rear lot line.
- f. *Building requirements.*
1. No principal structure shall exceed one story or 25 feet, whichever is least.
 2. No accessory structure shall exceed 15 feet in height.
 3. The unit structure is in compliance with the model manufactured home installation standards, 24 CFR 3285.
- g. *Parking.*
1. Each manufactured housing site shall have off-street parking space for two automobiles.
 2. Each manufactured housing park shall maintain additional hard surfaced off-street parking lots for guests of occupants in the amount of one space for each five sites.
 3. Access drives off roads to all parking spaces and unit sites shall be hard surfaced according to specifications established by the city.
- h. *Utilities.*
1. All manufactured housing units shall be connected to a public water and sanitary sewer system or a private water and sewer system approved by the state department of health.
 2. All installations for disposal of surface stormwater must be approved by the city.
 3. All utility connections shall be as approved by the city.
 4. The source of fuel for cooking, heating or other purposes at each manufactured housing site shall be as approved by the city.
 5. All utilities shall be underground; there shall be no overhead wires or supporting poles except those essential for street or other lighting purposes.
 6. No obstruction shall be permitted that impedes the inspection of plumbing, electrical facilities and related mobile home equipment.
 7. The method of garbage, waste and trash disposal must be approved by the city.
 8. The owner shall pay any required sewer connection fees to the city.
 9. The owner shall pay inspection and testing fees for utility service to the city.
 10. Facilities for fire protection shall be installed as required by the city.
- i. *Internal roads and streets.*

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1. Roads shall be surfaced as approved by the city.
 2. All roads shall have a concrete (mountable, roll type) curb and gutter.
 3. All streets shall be developed with a roadbed of not less than 24 feet in width. If parking is permitted on the street, then the roadbed shall be at least 36 feet in width. To qualify for the lesser sized street, adequate off-street parking must be provided.
 4. The park shall have a street lighting plan approved by the city.
- j. *Recreation.*
1. All manufactured housing courts shall have at least ten percent of the land area developed for recreational use (tennis court, children's play equipment, swimming pool, golf green, etc.) developed and maintained at the owner/operator's expense.
 2. In lieu of land dedication for public park purposes, a cash contribution as established by section 40-223 shall be paid to the city.
- k. *Landscaping.*
1. Each site shall be properly landscaped with trees, hedges, grass, fences, windbreaks and the like.
 2. A compact hedge, redwood fence or landscaped area shall be installed around each manufactured home park and be maintained in first class condition at all times as approved.
 3. All areas shall be landscaped in accordance with landscaping plan approved by the council.
- l. *Lighting.*
1. Artificial light shall be maintained during all hours of darkness in all buildings containing public toilets, laundry equipment and the like.
 2. The manufactured housing park grounds shall be lighted as approved by the city from sunset to sunrise.
- m. *Storage.*
1. Enclosed storage lockers (when provided) shall be located either adjacent to the manufactured home in a manufactured housing park or at such other place in the park as to be convenient to the unit for which it is provided.
 2. Storage of large items such as boats, boat trailers, etc., shall be accommodated in a separate secured and screened area of the park.
- n. *General development.* For those items not specifically referenced, the design standards as established by chapter 40 shall be utilized for general development guidelines.
- (f) *Registration.*
- (1) It shall be the duty of the operator of the manufactured housing park to keep a record of all homeowners and occupants located within the park. The register shall contain the following information:
 - a. The name and address of each unit occupant.
 - b. The name and address of the owner of each unit.
 - c. The make, model and year of the unit.

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- d. The state, territory or county issuing such license.
 - e. The date of arrival and departure of each unit.
 - f. The number and type of motor vehicles of residents in the park.
- (2) The park operator shall keep the register available for inspection at all times by authorized city, state and county officials, public health officials and other public offices whose duty necessitates acquisition of the information contained in the register. The register shall not be destroyed until after a period of three years following the date of departure of the registrant from the park.
- (g) *Maintenance.* The operator of any manufactured housing park, or a duly authorized attendant or caretaker shall be responsible at all times for keeping the park, its facilities and equipment, in a clean, orderly, operable and sanitary condition. The attendant or caretaker shall be answerable, along with the operator, for the violation of any provisions of these regulations to which the operator is subject.
- (h) *Review procedures.* All informational elements as required in subsection (e)(2) of this section shall be submitted to the city in accordance with the normal time schedule outlined for zoning district amendments, whether or not the proposal requires a rezoning. Proposals for manufactured housing park expansions on properly zoned land shall be reviewed for compliance with the applicable standards and requirements contained in subsection (e) of this section by all designated and official city review bodies.

(Code 1985, § 11.50)

Sec. 50-69. R-B Residential-Business Transition District.

- (a) *Purpose.* The purpose of the R-B Residential-Business District is to provide for high density residential use and for the transition in land use from residential to low intensity business allowing for the intermixing of such uses.
- (b) *Permitted uses.* All permitted uses allowed in an R-7 district are permitted uses allowed in an R-B district.
- (c) *Accessory uses.* All permitted accessory uses allowed in an R-7 district are permitted accessory uses in an R-B district.
- (d) *Conditional uses.* The following are conditional uses in an R-B district which requires a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter:
- (1) All conditional uses allowed in an R-7 district are conditional uses allowed in an R-B district.
 - (2) Hospitals, medical offices and clinics, dental offices and clinics, professional offices and commercial offices, veterinary clinics (not including outside kennels) and funeral homes and mortuaries, provided that:
 - a. The site and related parking and service entrances are served by an arterial or collector street of sufficient capacity to accommodate the traffic which will be generated.
 - b. Adequate off-street parking is provided in compliance with article V, division 2 of this chapter.
 - c. Adequate off-street loading is provided in compliance with article V, division 3 of this chapter.
 - d. Vehicular entrances to parking or service areas shall create a minimum of conflict with through traffic movement.
 - e. When abutting an R-1 or R-2 district, a buffer area with screening and landscaping in compliance with section 50-358 shall be provided.
 - f. All signing and information or visual communication devices shall be in compliance with the provisions of chapter 34.

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- g. The provisions of section 50-353(d) are considered and satisfactorily met.
- (3) Retail commercial activities, provided that:
- a. Merchandise is sold at retail.
 - b. Retail activity is located within a structure whose principal use is not commercial sales.
 - c. Retail activity shall not occupy more than 15 percent of the gross floor area of the building.
 - d. No directly or indirectly illuminated sign or sign in excess of ten square feet identifying the name of the business shall be visible from the outside of the building.
 - e. No signs or posters of any type advertising products for sale shall be located on the outside of the building.
 - f. The provisions of section 50-699 are considered and satisfactorily met.
- (4) Buildings combining residential and non-residential uses allowed in this district, provided that:
- a. Residential and nonresidential uses shall not be contained on the same floor.
 - b. Residential and nonresidential uses shall not conflict in any manner.
 - c. Residential building standards as outlined in this section are met.
 - d. Provisions of section 50-699 are considered and satisfactorily met.
- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in an R-B district, subject to additional requirements, exceptions and modifications set forth in this chapter:
- (1) Lot area: 15,000 square feet.
 - (2) Lot width: 100 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 30 feet.
 - b. Side yards: Not less than 15 feet on any one side, nor less than 30 feet on the side yard abutting the major street.
 - c. Rear yards: 30 feet.

(Code 1985, § 11.51)

Sec. 50-70. R-A Rural Residential Transition District.

- (a) *Purpose.* The purpose of the R-A Rural Residential Transition District is to provide for a low-density residential district in areas which are not yet capable of providing a full range of public utilities and services. In addition, this district will provide for and control the future development of such areas as they change from predominantly rural to predominantly urban in character, including the eventual timing of utility service extensions. This district is to be applied strictly in those areas which are expected to develop in an urban pattern and is not appropriate for permanent remote large lot rural residential development.
- (b) *Permitted uses.* The following are permitted uses in an R-A district:
 - (1) Single-family detached dwellings in compliance with this chapter.
 - (2) Public parks, trails and playgrounds.
 - (3) Essential services.

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- (c) *Accessory uses.* All permitted accessory uses in an R-R district are permitted accessory uses in an R-A district.
- (d) *Conditional uses.* The following are conditional uses in an R-A district which requires a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter:
- (1) Conditional uses listed in the R-R district are conditional uses in an R-A district.
 - (2) Single-family detached dwellings which vary from the setback requirements of this district.
- (e) *Lot requirements, standards, and setbacks.* The following minimum requirements shall be observed in an R-A district, subject to additional requirements, exceptions and modifications set forth in this chapter:
- (1) Lot area: 60,000 square feet, unsewered.
 - (2) Lot width:
 - a. Interior: 180 feet at the front setback lines.
 - b. Corner: 200 feet at the front setback line.
 - (3) Setbacks:
 - a. Front yards: Not less than 30 feet.
 - b. Side yards for lots of no more than 250 feet in width:
 1. Interior: Not less than 15 feet on one side nor less than 100 feet on the other side yard.
 2. Corner: Not less than 30 feet on the side abutting a street and 100 feet on the interior side, or not less than 15 feet on the interior side and not less than 110 feet on the side abutting a street.
 - c. Side yards for lots of more than 250 feet in width:
 1. Interior: Not less than 15 feet on one side and 180 feet on the other side.
 2. Corner: Not less than 30 feet on the side abutting a street and 180 feet on the interior side, or not less than 15 feet on the interior side and 190 feet on the side abutting a street.
 - d. Rear yards. Not less than 30 feet where the lot depth is equal to or less than 280 feet and not less than 180 feet where the lot depth is greater than 280 feet.
- (f) *Special district requirements.*
- (1) *Sanitary requirements.*
 - a. Upon establishment of any R-A district and platting of lots in that district, a report from a certified soils engineer must be submitted by the developer to the city documenting the maximum number of single-family private sanitary systems the soils on the site can accommodate in compliance with state and local health regulations. The number of lots platted in this district may at no time exceed the quantity specified in such a report. Regardless of the findings of this report, however, in no case shall the minimum lot sizes be reduced in any subdivision.
 - b. All dwellings constructed in the R-A district shall be required to be built so as to facilitate the future connection to the public sanitary sewer and water. Upon the availability of public utility services such as sanitary sewer and water, all existing dwelling units shall have 12 months from the date of availability to connect to the public utility services. All dwellings constructed after utility services are made available must connect at the time of dwelling unit construction.
 - (2) *Subdivision requirements.* As the R-A district is intended to facilitate the transition of rural land to urban densities, all subdivisions must be designed to facilitate future resubdivisions. Such a

resubdivision plan must be included with the preliminary plat application. Where the resubdivision plan includes the construction of future streets, the streets must be platted as street easements at the time of the original plat filing. To assure a full disclosure of the requirement for connection to public utilities, a covenant shall be added to the deed for any lot in such a subdivision describing the connection requirements. Any resubdivision must comply with the performance standards of the zoning district. The intent of the R-A district is to provide for the eventual rezoning and resubdivision of the R-A development.

(Code 1985, § 11.52)

Sec. 50-71. B-1 District (Reserved).

Sec. 50-72. B-2 Limited Business District.

- (a) *Purpose.* The purpose of the B-2 Limited Business District is to provide for low intensity retail or service outlets which deal directly with the customer for whom the goods or services are furnished. The uses allowed in this district are to provide goods and services on a limited community market scale and are to be located only in areas which are well served by collector or arterial street facilities at the edge of residential districts.
- (b) *Permitted uses.* The following are permitted uses in a B-2 district:
- (1) Art and school supplies.
 - (2) Bakery goods and baking of goods for retail sales on the premises.
 - (3) Bank, savings and loan, savings credit unions and other financial institutions.
 - (4) Bicycle sales and repairs.
 - (5) Candy, ice cream, popcorn, nuts, frozen desserts and soft drinks.
 - (6) Camera and photographic supplies.
 - (7) Delicatessens.
 - (8) Dry cleaning pick-up and laundry pick-up stations, including incidental repair and assembly, but not including processing.
 - (9) Drugstores.
 - (10) Florist shops.
 - (11) Frozen food stores, but not including a locker plant.
 - (12) Gift or novelty stores.
 - (13) Grocery, fruit or vegetable stores, but not including sales from movable, motorized vehicles.
 - (14) Grocery, supermarkets.
 - (15) Hardware stores.
 - (16) Hobby stores, including handicraft classes, but not to exceed 15 students.
 - (17) Ice sales with storage not to exceed five tons.
 - (18) Insurance sales.
 - (19) Liquor, off-sales.

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- (20) Locksmiths.
 - (21) Meat markets, but not including processing for a locker plants.
 - (22) Medical and dental offices and clinics.
 - (23) Paint and wallpaper sales.
 - (24) Personal services.
 - (25) Plumbing, television, radio, electrical sales and such repair as are accessory use to the retail establishments permitted within this district.
 - (26) Public utility collection offices.
 - (27) Public garages.
 - (28) Real estate sales.
 - (29) Shoe repairs.
- (c) *Accessory uses.* The following are permitted accessory uses in a B-2 district:
- (1) Commercial or business buildings and structures for a use accessory to the principal use but such use shall not exceed 30 percent of the gross floor space of the principal use.
 - (2) Off-street parking as regulated by article V, division 2 of this chapter, but not including semi-trailer trucks.
 - (3) Off-street loading as regulated by article V, division 3 of this chapter.
 - (4) Adult uses, accessory, as regulated by section 50-425.
- (d) *Conditional uses.* The following are conditional uses allowed in a B-2 district which requires a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter: commercial planned unit development as regulated by article III of this chapter.
- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in a B-2 district, subject to additional requirements, exceptions and modifications set forth in this chapter:
- (1) Lot area: 15,000 square feet.
 - (2) Lot width: 100 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 30 feet.
 - b. Side yards: Not less than ten feet on any one side, nor less than 30 feet on the side yard abutting a street.
 - c. Rear yards: 20 feet.

(Code 1985, § 11.61; Ord. No. 2021-4 , § 1(11.61), 7-19-2021)

Sec. 50-73. B-3 Highway Commercial District.

- (a) *Purpose.* The purpose of the B-3 Highway Commercial District is to provide for and limit the establishment of motor vehicle oriented or dependent high intensity commercial and service activities.
- (b) *Permitted uses.* The following are permitted uses in a B-3 district:
 - (1) Auto accessory stores.

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- (2) Motor vehicle and recreation equipment sales, uses, structures and outdoor sales and storage accessory thereto.
 - (3) Commercial recreational uses.
 - (4) Motels, motor hotels and hotels, provided that the lot area contains not less than 500 square feet of lot area per unit.
 - (5) Restaurants, cafes, on and off-sale liquor.
 - (6) Private clubs or lodges serving food and beverages.
 - (7) Adult uses, principal, as regulated by section 50-425.
 - (8) Dog kennels.
 - (9) Retail commercial printing, provided that no less than 20 percent of the floor area is devoted to retail sales and display.
 - (10) Retail establishments that sell THC products, as defined in City Code chapter 45, subject to the licensing requirements therein.
- (c) *Accessory uses.* The following are permitted accessory uses in a B-3 district:
- (1) All permitted accessory uses as allowed in a B-2 district.
 - (2) Semi-truck parking.
- (d) *Conditional uses.* The following are conditional uses in a B-3 district which requires a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter:
- (1) Drive-through and convenience food establishments, provided that:
 - a. The architectural appearance and functional plan of the building and site shall not be so dissimilar to the existing buildings or area so as to cause impairment in property values or constitute a blighting influence within a reasonable distance of the lot.
 - b. At the boundaries of a residential district, a strip of not less than five feet shall be landscaped and screened in compliance with section 50-358.
 - c. Each light standard island and all islands in the parking lot landscaped or covered.
 - d. Parking areas shall be screened from view of abutting residential districts in compliance with section 50-358.
 - e. Parking areas and driveways shall be curbed with continuous curbs not less than six inches high above the parking lot or driveway grade.
 - f. Vehicular access points shall be limited, shall create a minimum of conflict with through traffic movements, shall comply with article V, division 2 of this chapter and shall be subject to the approval of the city engineer and the city planner.
 - g. All lighting shall be hooded and so directed that the light source is not visible from the public right-of-way or from an abutting residence and shall be in compliance with section 50-360.
 - h. The entire area shall have a drainage system which is subject to the approval of the city engineer.
 - i. The entire area other than occupied by buildings or structures or plantings shall be surfaced with a material which will control dust and drainage and which is subject to the approval of the city engineer.

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- j. All signing and informational or visual communication devices shall be in compliance with the provisions of chapter 34.
 - k. The provisions of section 50-699 are considered and satisfactorily met.
- (2) Commercial car washes (drive-through, mechanical and self-service), provided that:
- a. The architectural appearance and functional plan of the building and site shall not be so dissimilar to the existing buildings or areas as to cause impairment in property values or constitute a blighting influence.
 - b. Magazining or stacking space is constructed to accommodate that number of vehicles which can be washed during a maximum 30-minute period and shall be subject to the approval of the city engineer and city planner.
 - c. At the boundaries of a residential district, a strip of not less than five feet shall be landscaped and screened in compliance with section 50-358.
 - d. Each light standard island and all islands in the parking lot landscaped or covered.
 - e. Parking or car magazine storage space shall be screened from view of abutting residential districts in compliance with section 50-358.
 - f. The entire area other than occupied by the building or planting shall be surfaced with material which will control dust and drainage which is subject to the approval of the city engineer.
 - g. The entire area shall have a drainage system which is subject to the approval of the city.
 - h. All lighting shall be hooded and so directed that the light source is not visible from the public right-of-way or from an abutting residence and shall be in compliance with section 50-360.
 - i. Vehicular access points shall be limited, shall create a minimum of conflict with through traffic movement and shall be subject to the approval of the city engineer and city planner.
 - j. All signing and informational or visual communication devices shall be in compliance with the provisions of chapter 34.
 - k. Provisions are made to control and reduce noise.
 - l. The provisions of section 50-699 are considered and satisfactorily met.
- (3) Gas station, auto repair, minor, and tire and battery stores and service, provided that:
- a. Regardless of whether the dispensing, sale or offering for sale of motor fuels or oil is incidental to the conduct of the use or business, the standards and requirements imposed by this chapter for motor fuel stations shall apply. These standards and requirements are, however, in addition to other requirements which are imposed for other uses of the property.
 - b. The architectural appearance and functional plan of the building and site shall not be so dissimilar to the existing buildings or area as to cause impairment in property values or constitute a blighting influence within a reasonable distance of the lot.
 - c. The entire site other than that taken up by a building, structure or plantings shall be surfaced with a material to control dust and drainage which is subject to the approval of the city engineer.
 - d. A minimum lot area of 20,000 square feet and minimum lot widths of 150 feet.
 - e. A drainage system subject to the approval of the city engineer shall be installed.
 - f. A curb not less than six inches above grade shall separate the public sidewalk from motor vehicle service areas.

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- g. The lighting shall be accomplished in such a way as to have no direct source of light visible from adjacent land in residential use or from the public right-of-way and shall be in compliance with section 50-360.
 - h. Wherever fuel pumps are to be installed, pump islands shall be installed.
 - i. At the boundaries of a residential district, a strip of not less than five feet shall be landscaped and screened in compliance with section 50-358.
 - j. Each light standard landscaped.
 - k. Parking or car magazine storage space shall be screened from view of abutting residential districts in compliance with section 50-358.
 - l. Vehicular access points shall create a minimum of conflict with through traffic movement, shall comply with article V, division 2 of this chapter and shall be subject to the approval of the city engineer.
 - m. All signing and informational or visual communication devices shall be minimized and shall be in compliance with the provisions of chapter 34.
 - n. Provisions are made to control and reduce noise.
 - o. No outside storage except as allowed in compliance with article VI, division 2 of this chapter.
 - p. Sale of products other than those specifically mentioned in this subsection are subject to a conditional use permit and shall be in compliance with subsection (d)(6) of this subsection.
 - q. All conditions pertaining to a specific site are subject to change when the council, upon investigation in relation to a formal request, finds that the general welfare and public betterment can be served as well or better by modifying the conditions.
 - r. The provisions of section 50-699 are considered and satisfactorily met.
- (4) Convenience store with gasoline. Grocery or food operations, with convenience gas (no vehicle service or repair), provided that:
- a. Permitted uses. The retail sales involve uses or activities which are allowed in a B-2 or B-3 district.
 - b. Take-out food. Convenience/deli food is of the take-out type only and that no provision for seating or consumption on the premises is provided. Furthermore, that the enclosed area devoted to such activity, use and merchandise shall not exceed 15 percent of the gross floor area.
 - c. Sanitation. That any sale of food items is subject to the approval of the health inspector who shall provide specific written sanitary requirements for each proposed sale location based upon applicable state and county regulations.
 - d. Licenses. That the non-automotive sales shall qualify for and be granted an annual food handling, retail sales license or other license, as circumstances shall require, in addition to the conditional use permit.
 - e. Area. That the approximate area and location devoted to non-automotive merchandise sales shall be specified in general terms in the application and in the conditional use permit. Exterior sales shall be subject to a separate conditional use permit.
 - f. Hours of operation. The hours of operation shall be limited to 6:00 a.m. to 12:00 midnight, unless extended by the council.
 - g. Motor fuel facilities. Motor fuel facilities are installed in accordance with state and city standards. Additionally, adequate space shall be provided to access gas pumps and allow maneuverability

around the pumps. Underground fuel storage tanks are to be positioned to allow adequate access by motor fuel transports and unloading operations do not conflict with circulation, access and other activities on the site. Fuel pumps shall be installed on pump islands.

- h. Canopy. A protective canopy located over pump island may be an accessory structure on the property and may be located 20 feet or more from the front lot line, provided adequate visibility both on and off site is maintained. Canopy signs shall be calculated as a part of the maximum sign area for the property.
 - i. Compatibility. The architectural appearance and functional plan of the building and site shall not be so dissimilar to the existing buildings or area as to cause impairment in property values or constitute a blighting influence within a reasonable distance of the lot. All sides of the principal and accessory structures are to have essentially the same or a coordinated, harmonious finish treatment.
 - j. Dust control and drainage. The entire site other than that taken up by a building, structure or plantings shall be surfaced with a material to control dust and drainage which is subject to the approval of the city.
 - k. Area. A minimum lot area of 22,500 square feet and minimum lot dimensions of 150 feet by 130 feet. The council may exempt previously developed or previously platted property from this requirement provided that the site is capable of adequately and safely handling all activities and required facilities.
 - l. Curb separation. A continuous and permanent concrete curb not less than six inches above grade shall separate the public sidewalk from motor vehicles areas.
 - m. Landscaping. At the boundaries of the lot, a strip of not less than five feet shall be landscaped and screened in compliance with article VI, division 2 of this chapter.
 - n. Light standards landscaped. Each light standard shall be landscaped.
 - o. Access. Vehicular access points shall create a minimum of conflict with through traffic movement and shall be subject to the approval of the city.
 - p. Pedestrian traffic. An internal site pedestrian circulation system shall be defined and appropriate provisions made to protect such areas from encroachments by parked cars or moving vehicles.
 - q. Noise. Noise control shall be as required in noise control provisions of this chapter.
 - r. Outside storage. No outside storage except as allowed in compliance with article VI, division 2 of this chapter. An enclosed screened area is to be provided for rubbish and dumpsters.
 - s. The provisions of section 50-699 are considered and satisfactorily met.
- (5) Open or outdoor service, sale and rental other than those specified as a principal use in this district, provided that:
- a. Outside services, sales and equipment rental connected with the principal use is limited to 50 percent of the gross floor area of the principal use.
 - b. Outside sales areas are fenced or screened from view of neighboring residential uses or an abutting R district in compliance with section 50-358.
 - c. All lighting shall be hooded and so directed that the light source shall not be visible from the public right-of-way or from neighboring residences and shall be in compliance with section 50-360.
 - d. Sales area is grassed or surfaced to control dust.

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- e. The use does not take up parking space as required for conformity to this chapter.
 - f. The provisions of section 50-353(d) are considered and satisfactorily met.
- (6) Accessories, enclosed retail, rental or service activity other than that allowed as a permitted use or conditional use within this section, provided that:
- a. Such use is allowed as a permitted use in a B-2 district.
 - b. Such use does not constitute more than 30 percent of the lot area and not more than 50 percent of the gross floor area of the principal use.
 - c. Adequate off-street parking and off-street loading in compliance with the requirements of article V, divisions 2 and 3 of this chapter is provided.
 - d. All signing and informational or visual communication devices shall be in compliance with the provisions of chapter 34.
 - e. The provisions of section 50-699 are considered and satisfactorily met.
- (7) Commercial uses allowed as a permitted use within the B-2 district, provided that:
- a. The type of activity complies with the intent of this zoning district and the objectives of the comprehensive plan.
 - b. The provisions of section 50-699 are considered and satisfactorily met.
- (8) Retail or wholesale trade conducted by auction, provided each of the following conditions are met:
- a. All sales shall be held indoors unless a separate conditional use permit is obtained to allow outdoor sales.
 - b. The use is compatible with the surrounding, existing and future land uses of the area.
 - c. There will be no outdoor storage, except as allowed in compliance with article VI, division 2 of this chapter. An enclosed, fully screened area is to be provided for rubbish and dumpsters.
 - d. Noise control shall be as required in noise control provisions of this chapter.
 - e. Vehicular access points shall create a minimum of conflict with through traffic movement and shall be subject to the approval of the city.
 - f. The site shall be landscaped in conformance with article VI, division 2 of this chapter.
 - g. Parking and loading requirements must be reviewed and comply with article V, divisions 2 and 3 of this chapter.
 - h. All lighting shall be hooded and so directed that the light source shall not be visible from the public right-of-way or from neighboring residences and shall be in conformance with section 50-360.
 - i. The entire area shall have a drainage system which is subject to the approval of the city engineer.
 - j. There shall be no food or perishable items available for auction at the site unless adequate refrigeration is on site and food handling license is obtained and the equipment is approved by the state health inspector.
 - k. All conditions pertaining to a specific site area subject to change when the council, upon investigation in relation to a formal request, finds that general welfare and public betterment can be served as well or better by modifying the conditions.
 - l. All signage shall be in conformance with the sign regulation provisions of this Code.

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- m. The provisions of section 50-699 are considered and satisfactorily met.
- (9) Livestock auction sales as a principal or accessory use in the B-3 district, provided that:
- a. The use is not an animal feedlot operation.
 - b. All state or federal permits shall be obtained and on file with the city.
 - c. The use shall be in conformance with the required yard setback.
 - d. The site shall have access to a major thoroughfare street.
 - e. If the activity is a principal use, it shall be fully screened from the highway in conformance with article VI, division 2 of this chapter.
 - f. There shall be no permanent signage on the site or in the city indicating the use.
 - g. All temporary signs shall be in conformance with provisions of this Code relating to signs.
 - h. All provisions of subsection (d)(8) of this section are considered and satisfactorily met.
 - i. The provisions of section 50-699 are considered and satisfactorily met.
- (10) Outdoor display of agricultural equipment and materials for retail sale, or outdoor display of equipment for rent as an accessory use in the B-3 district, provided that:
- a. The use must occupy not more than ten percent of the front yard of the lot on which the principal building is located.
 - b. Any such use must not take up parking space as required by this chapter.
 - c. Any such use in the front yard must be paved.
 - d. The maximum total amount of outdoor display and storage must occupy no more than 150 percent of the floor space of the principal building on the lot.
 - e. Equipment stored or displayed outdoors must be directly related to the principal use of the parcel.
 - f. Storage and display areas which are not paved must be fully screened from the view of surrounding properties and from the public right-of-way. Storage may not be taller than the screening fence.
 - g. Landscaping of the area is to be included to provide a buffer from surrounding properties. The landscaping plan is to be approved by the zoning administrator.
- (11) Entertainment venues. Business locations providing for the assembly of persons, either indoor or outdoor, in which entertainment is provided as all or part of the business services, including both live or recorded entertainment, but not including incidental background music or similar services, nor those uses expressly listed as permitted uses in this chapter. Examples of such businesses include, but are not limited to, amusement places, dance halls, reception halls and similar facilities, provided that:
- a. Any noise shall be controlled so as to not be audible from residentially zoned property without a separate permit from the city.
 - b. The facility shall be responsible for the control of crowds before, during, and after business hours, including dispersal of loitering in adjacent parking lots, sidewalks, or similar spaces.
 - c. The operator or owner shall be responsible for employing appropriate levels of security for the entertainment venue. Examples of such security may include security cameras, security staffing, or similar methods. Where off-site security is a concern, the operator or owner shall notify public safety personnel as necessary.

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- d. Hours of operation shall be approved by the city council.
 - e. Other conditions of operation approved by the city council.
 - f. The conditional use permit shall be reviewed on an annual basis by the planning commission for compliance with the terms of the permit.
- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in a B-3 district subject to additional requirements, exceptions and modifications set forth in this chapter:
- (1) Lot area: 15,000 square feet.
 - (2) Lot width: 100 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 30 feet.
 - b. Side yards: Not less than 20 feet on any one side, nor less than 30 feet on the side yard abutting a street.
 - c. Rear yards: 30 feet.

(Code 1985, § 11.62; Ord. No. 2020-4 , 12-21-2020; Ord. No. 2023-4 , § 1, 3-20-2023)

Sec. 50-74. B-4 General Business District.

- (a) *Purpose.* The purpose of the B-4 General Business District is to provide for the establishment of commercial and service activities which draw from and serve customers from the entire community or region.
- (b) *Permitted uses.* The following are permitted uses in a B-4 district:
- (1) All permitted uses as allowed in a B-2 and B-3 district.
 - (2) Antique or gift shops.
 - (3) Amusement places (such as dance halls or roller rinks).
 - (4) Animal clinics (with no overnight care).
 - (5) Books, office supplies or stationery stores.
 - (6) Bowling alleys.
 - (7) Carpets, rugs and tiles.
 - (8) Coin and philatelic stores.
 - (9) Copy services, but not including printing press or newspaper.
 - (10) Costumes, clothes rental.
 - (11) Department and discount stores.
 - (12) Dry cleaning including plant accessory heretofore, pressing and repairing.
 - (13) Dry good stores.
 - (14) Electrical appliance stores, including incidental repair and assembly, but not fabricating or manufacturing.
 - (15) Employment agencies.
 - (16) Furniture stores.

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- (17) Furriers when conducted only for retail trade on premises.
 - (18) Garden supply stores.
 - (19) Insurance sales, claims and branch offices.
 - (20) Jewelry stores and luggage stores.
 - (21) Leather goods and luggage stores.
 - (22) Record - music shops.
 - (23) Sewing machine sales and services.
 - (24) Shoe stores.
 - (25) Tailor shops.
 - (26) Theatres, not of the outdoor drive-in type.
 - (27) Toy stores.
 - (28) Travel bureaus, transportation ticket offices.
 - (29) Variety stores.
 - (30) Wearing apparels.
 - (31) Pawnshops and pawnbrokers.
 - (32) Secondhand goods dealers.
 - (33) Retail establishments that sell THC products, as defined in City Code chapter 45, subject to the licensing requirements therein.
- (c) *Accessory uses.* All permitted accessory uses in a B-3 district are permitted accessory uses in a B-4 district.
- (d) *Conditional uses.* The following are conditional uses in a B-4 district which requires a conditional use permit based on procedures set forth in and regulated by article XIII, division 3 of this chapter:
- (1) All conditional uses subject to the same conditions as allowed in the B-3 district.
 - (2) Commercial printing establishments or newspaper provided that:
 - a. The architectural appearance and functional plan of the building and site shall not be so dissimilar to the existing buildings or area so as to cause impairment in property values or constitute a blighting influence within a reasonable distance of the lot.
 - b. The entire area shall have a drainage system which is subject to the approval of the city engineer.
 - c. At the boundaries of the residential district, a strip of not less than five feet shall be landscaped and screened in compliance with section 50-358.
 - d. The entire area other than occupied by buildings or structures or plantings shall be paved and curbed to control dust and drainage, subject to approval of the city engineer.
 - e. Number of parking spaces shall be consistent with a retail sales and service business. At least one off-street parking space is required for each 200 square feet of floor area.
 - f. Parking areas shall be screened from view of abutting residential districts in compliance with section 50-358.
 - g. Parking areas and driveways shall be curbed with continuous curbs not less than six inches high above the parking lot or driveway grade.

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- h. Adequate space is provided for loading facilities which does not disrupt parking for access circulation. Loading facilities and their access, shall be separated from customer parking area and located in the rear or side yard.
 - i. Loading area shall be fenced and screened from view of neighboring residential uses and districts in compliance with section 50-358.
 - j. Vehicular access points shall be limited, shall create a minimum of conflict with through traffic movements, shall comply with article V, divisions 2 and 3 of this chapter and shall be subject to the approval of the city engineer and the city planner.
 - k. All lighting shall be hooded and so directed that the light source is not visible from the public right-of-way or from an abutting residence and shall be in compliance with section 50-360.
 - l. Each light standard island and all islands in the parking lot shall be landscaped or covered.
 - m. All signing and informational or visual communication devices shall be in compliance with the provisions of chapter 34.
 - n. The provisions of section 50-699 are considered and satisfactorily met.
 - o. No outside storage occurs on the site.
- (3) Brewery/taproom, provided that:
- a. The use qualifies for, and receives, all appropriate licensing from the city, and any other applicable agency.
 - b. The facility provides adequate space for off-street loading and unloading of all trucks greater than 22 feet in length.
 - c. Loading docks are not visible from adjoining public streets or adjoining residential use or zoning.
 - d. No outdoor storage is permitted on the site, with the exception that waste handling (refuse or recycling) may occur in an enclosure that is fully screened from adjoining streets and residential use or zoning.
 - e. No odors from the business may be perceptible beyond the property line.
 - f. The business must be housed in a building that utilizes building design similar to, or compatible with, common commercial architecture, and shall avoid large wall expanses which contribute to an industrial environment.
 - g. Parking supply shall be provided on-site, or through off-site arrangement which avoid street parking on residential streets. Off-site or reduced parking supply shall require separate approval per the requirements of section 50-264(30), articles III and V, division 2 of this chapter.
 - h. No exterior lighting source, including sign lighting, shall be visible from adjoining residential property.
- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in a B-4 district, subject to additional requirements, exceptions and modifications set forth in this chapter:
- (1) Lot area: 20,000 square feet.
 - (2) Lot width: 100 feet.
 - (3) Setbacks: 30 feet when abutting a street or a residential district.

(Code 1985, § 11.63; Ord. No. 2023-4 , § 2, 3-20-2023)

Sec. 50-75. B-5 Central Business District.

- (a) *Purpose.* The purpose of the B-5 Central Business District is to provide specifically for the regulation of high intensity commercial uses located within the downtown Central Business District.
- (b) *Permitted uses.* All permitted uses allowed in B-2, B-3 and B-4 districts are permitted uses in a B-5 district.
- (c) *Accessory uses.* All permitted accessory uses in a B-4 district are permitted accessory uses in a B-5 district.
- (d) *Conditional uses.* The following are conditional uses in a B-5 district which requires a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter:
 - (1) All conditional uses subject to the same conditions as allowed in the B-4 district.
 - (2) Public or semi-public recreational buildings and neighborhood or community centers; public educational institutions; private educational institutes limited to elementary, junior high, senior high schools, or colleges; religious institutes such as church, temples, and synagogues; provided that the provisions of section 50-59(d) are considered and satisfactorily met.
 - (3) Residential dwelling units, subject to the following conditions:
 - a. The residential dwelling unit does not occupy a street level floor.
 - b. At least one parking space per unit must be provided on site, or proof is shown of arrangements for private parking nearby.
 - c. No physical improvements, either interior or exterior, may preclude future reuse for commercial purposes.
 - d. No more than one floor of the building may be occupied by a residential use.
 - e. Unit floor areas must comply with section 50-196(b).
 - f. Compliance with conditional use requirements of article XIII, division 3 of this chapter.
 - (4) Off-street parking facilities which encroach into the five-foot required parking lot setback. Such parking facilities must meet the following criteria:
 - a. The parking lot shall be constructed no closer than two feet from the property line.
 - b. The parking lot shall be entirely paved and curbed.
 - c. Intense landscaping shall occupy all open areas bordering or within the parking area.
 - d. Entrance/exit only signs shall be posted where necessary.
 - e. Winter snow storage areas shall be provided in accordance with section 50-259(h)(17) or snow shall be hauled off-site.
 - f. Parking lot dimensions shall meet the required angles, widths, and depths designated by section 50-258.
 - g. Lighting shall be in compliance with section 50-360.
 - h. The encroachment is necessary to accommodate the parking demand calculations of this chapter.
 - i. All other applicable requirements designated in article V, division 2 of this chapter.
 - (5) Brewery/taprooms as regulated in section 50-74(d)(3).
 - (6) Multiple-family residential dwelling units in a single building which occupy the ground floor, provided that:

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- a. The project is comprised of no fewer than 20 residential units.
 - b. The project is approved as a part of a planned unit development process, and all requirements and standards of such process have been found to be consistent with the comprehensive plan and land use policies related to the site in question.
 - c. Density is no greater than 1,000 square feet per unit, except in the case of elderly housing as allowed in this chapter.
- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in a B-5 district subject to additional requirements, exceptions and modifications set forth in this chapter:
- (1) Lot area: None.
 - (2) Lot width: None.
 - (3) Setbacks: 30 feet when abutting a residential district.

(Code 1985, § 11.64)

Sec. 50-76. B-6 Health Care Facility District.

- (a) *Purpose.* The purpose of the B-6 Health Care Facility District is to provide for the establishment of exclusive medical service developments and directly supportive facilities.
- (b) *Permitted uses.* The following are permitted uses in a B-6 district:
- (1) Medical offices and clinics.
 - (2) Dental offices and clinics.
 - (3) Retail commercial facilities and service businesses which provide medical, dental and optical products or service only.
 - (4) Medical, dental and optical related research and manufacturing facilities.
 - (5) Hospitals.
 - (6) Commercial leased offices.
- (c) *Accessory uses.* The following are permitted accessory uses within a B-6 district:
- (1) Commercial or business buildings and structures for a use accessory to the principal use.
 - (2) Food service as minor part of an institution, hospital or retail service facility.
 - (3) Off-street parking as regulated by article V, division 2 of this chapter.
 - (4) Off-street loading as regulated by article V, division 3 of this chapter.
- (d) *Conditional uses.* The following are conditional uses in a B-6 district which requires a conditional use permit based upon procedures set forth and regulated by article XIII, division 3 of this chapter:
- (1) Retail commercial activities, provided that:
 - a. Merchandise is sold at retail.
 - b. The products being sold are directly related to or supportive of medical facilities and their users. Examples are the following or similar to:
 - 1. Drug stores.
 - 2. Flower shops.

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- 3. Card/gift shops.
 - c. All signing and informational or visual communication devices shall be in compliance with the provisions of chapter 34.
 - d. Adequate off-street parking is provided in compliance with article V, division 2 of this chapter.
 - e. Adequate screening is provided from abutting low-density residential property in compliance with article VI, division 2 of this chapter.
 - (2) Nursing homes and similar group housing accommodating 17 or more individuals, provided that:
 - a. Side yards are double the minimum requirements established for this district and are screened in compliance with section 50-358.
 - b. Only the rear yard shall be used for play or recreational areas. The areas shall be fenced and controlled and screened in compliance with section 50-358.
 - c. The site shall be served by an arterial or collector street of sufficient capacity to accommodate traffic which will be generated.
 - d. All signing and informational or visual communication devices shall be in compliance with the provisions of chapter 34.
 - e. All state laws and statutes governing such use are strictly adhered to and all required operating permits are secured.
 - f. Adequate off-street parking is provided in compliance with article V, division 2 of this chapter.
 - g. One off-street loading space in compliance with article V, division 3 of this chapter is provided.
 - (3) Elderly (senior citizen) housing, provided that:
 - a. Not more than ten percent of the occupants may be 60 years of age or older.
 - b. To continue to qualify for the elderly housing classification, the owner or agency shall annually file with the city administrator a certified copy of a monthly resume of occupants of such a multiple dwelling, listing the number of tenants by age and clearly identifying and setting forth the relationship of all occupants 60 years of age or under to qualified tenants, or to the building.
 - c. There is adequate off-street parking in compliance with article V, division 2 of this chapter.
 - d. One off-street loading space in compliance with article V, division 3 of this chapter.
 - e. Parking areas are screened and landscaped from view of surrounding and abutting residential districts in compliance with section 50-358.
 - f. All signing and informational or visual communication devices shall be in compliance with the provisions of chapter 34.
 - g. The principal use structure is in compliance with the state uniform building code.
 - h. Elevator service is provided to each floor level above ground floor.
 - i. Usable open space at minimum is equal to 20 percent of the gross lot area.
 - (4) Commercial/health care planned unit development as regulated by section 50-83.
 - (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in a B-6 district subject to additional requirements, exceptions and modifications set forth in this chapter:
 - (1) Lot area: 15,000 square feet.

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- (2) Lot width: 100 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 30 feet.
 - b. Side yards: Not less than 20 feet on any one side, nor less than 30 feet on the side yard abutting a street.
 - c. Rear yards: Not less than 20 feet.

(Code 1985, § 11.65)

Sec. 50-77. B-W Business-Warehousing District.

- (a) *Purpose.* The purpose of the B-W Business-Warehousing District is to provide for the establishment of wholesale and retail trade of large volume or bulk commercial items storage and warehousing. The overall character of the B-W district is intended to be transitional in nature, thus industrial uses allowed within this district shall be limited to those which can compatibly exist adjacent to commercial and lower density activities.
- (b) *Permitted uses.* The following are permitted uses in a B-W district:
 - (1) Radio and television stations.
 - (2) Warehouses.
 - (3) Governmental and public utility buildings and structures.
 - (4) Cartage and express facilities.
 - (5) Building materials sales.
 - (6) Transportation terminals.
 - (7) Wholesale business and office establishments.
 - (8) Commercial recreation.
 - (9) Research laboratories.
- (c) *Accessory uses.* The following are permitted accessory uses in a B-W district:
 - (1) All permitted accessory uses as allowed in a B-4 district.
 - (2) Semi-truck parking.
- (d) *Conditional uses.* The following are conditional uses in a B-W district which requires a conditional use permit based upon procedures set forth and regulated by article XIII, division 3 of this chapter:
 - (1) Open or outdoor service, sale and rental as a principal or accessory use, provided that:
 - a. Outside services, sales and equipment rental connected with the principal use is limited to 50 percent of the gross floor area of the principal use.
 - b. Outside sales areas are fenced and screened from view of neighboring residential uses or an abutting R district in compliance with section 50-358.
 - c. All lighting shall be hooded and so directed that the light source shall not be visible from the public right-of-way or from neighboring residences and shall be in compliance with section 50-360.

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- d. The use does not take up parking space as required for conformity to this chapter.
 - e. Sales area is grassed or surfaced to control dust.
 - f. The provisions of section 50-699 are considered and satisfactorily met.
- (2) Accessory, enclosed retail, rental, service, or processing, manufacturing activity other than that allowed as a permitted use or conditional use within this section, provided that:
- a. Such use is allowed as a permitted use in a B-4 or I-1 district.
 - b. Such use does not constitute more than 50 percent of the gross floor area of the principal use.
 - c. Adequate off-street parking and off-street loading in compliance with the requirements of article V, divisions 2 and 3 of this chapter is provided.
 - d. All signing and informational or visual communication devices shall be in compliance with the provisions of chapter 34.
 - e. The provisions of section 50-699 are considered and satisfactorily met.
- (3) Commercial/industrial planned unit development, as regulated by article III of this chapter.
- (4) Nursery and landscaping operations as a principal or accessory use, provided that:
- a. No more than 50 percent of gross lot area is utilized as growing fields.
 - b. Outdoor sales/display area shall be limited to 30 percent of the gross lot area and not take upon required parking or loading area in conformity with this chapter.
 - c. The provisions of section 50-699 are considered and satisfactorily met.
- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in a B-W district subject to additional requirements, exceptions and modifications set forth in this chapter:
- (1) Lot area: 20,000 square feet.
 - (2) Lot width: 100 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 30 feet.
 - b. Side yards:
 - 1. Not less than 20 feet on any one side, nor less than 30 feet on the side yard abutting a street.
 - 2. Side yards abutting residentially zoned property: Not less than 30 feet on the side yard abutting the residentially zoned property, nor less than 20 feet on the other side yard.
 - c. Rear yards: Not less than 30 feet.

(Code 1985, § 11.66)

Sec. 50-78. BC Business Campus District.

- (a) *Purpose.* The purpose of the Business Campus District is to provide for the establishment of limited light industrial business offices, wholesale showrooms, and related uses in an environment which provides a high level of amenities, including landscaping, preservation of natural features, architectural controls, and other features. The overall intention of the BC district is to be transitional in nature between the BW Business Warehousing and I-1 Light Industrial District.

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- (b) *Permitted uses.* The following uses are permitted uses in a BC district:
- (1) Commercial/professional offices.
 - (2) Wholesale showrooms.
 - (3) Conference centers.
 - (4) Radio and television stations.
 - (5) Governmental and public utility buildings and structures.
 - (6) Indoor commercial recreation and outdoor civic centers.
 - (7) Laboratories.
 - (8) Commercial printing establishments.
- (c) *Accessory uses.* The following are permitted accessory uses in the BC district:
- (1) Commercial or business buildings and structures for a use accessory to the principal use but such use shall not exceed 30 percent of the gross floor space of the principal use.
 - (2) Off-street parking as regulated by article V, division 2 of this chapter.
 - (3) Off-street loading as regulated by article V, division 3 of this chapter.
- (d) *Conditional uses.* The following are conditional uses in a BC district which requires a conditional use permit based upon procedures set forth and regulated by article XIII, division 3 of this chapter:
- (1) Manufacturing, compounding, assembly, packaging, treatment or storage of products and materials provided that:
 - a. The proposed use complies with the design standards outlined in subsection (e) of this section.
 - b. The provisions of article XIII, division 3 of this chapter are considered and satisfactorily met.
 - (2) Warehousing/storage, provided that:
 - a. The proposed use complies with the design standards outlined in this section.
 - b. The provisions of article XIII, division 3 of this chapter are considered and satisfactorily met.
 - (3) Commercial/industrial planned unit development as regulated by section 50-83.
 - (4) Indoor limited retail sales accessory to office/manufacturing uses, provided that:
 - a. Location.
 1. All sales are conducted in a clearly defined area of the principal building reserved exclusively for retail sales. The sales area must be physically segregated from other principal activities in the building.
 2. The retail sales area must be located on the ground floor of the principal building.
 - b. Sales area. The retail sales activity shall not occupy more than 15 percent of the gross floor area of the building.
 - c. Access. The building where such use is located is one having direct access to a collector or arterial level street without the necessity of using residential streets.
 - d. Hours. Hours of operation are limited to 8:00 a.m. to 9:00 p.m.
 - e. The provisions of this section are considered and satisfactorily met.

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- (5) Outdoor storage. Open and outdoor storage is a conditional use, provided that procedures set forth and regulated by section 50-366 are followed.
- The storage area is in compliance with article XIII, division 3 of this chapter and the following.
 - Storage area shall be limited to a maximum of 20 percent of the gross lot area.
 - Storage area shall be setback 30 feet from all property lines.
 - The storage area is surfaced with bituminous to control dust.
 - The provisions of article XIII, division 3 of this chapter are considered and satisfactorily met.
- (6) Food distribution, food shelf, provided that:
- The facility is located on a roadway which permits retail traffic to avoid conflicts with commercial/industrial traffic.
 - The facility has adequate parking for distribution to avoid on-street parking.
 - The facility has adequate space for off-street loading to avoid utilizing the public street.
 - The facility meets the requirements and processing of article XIII, division 3 of this chapter.
- (e) *Design and site plan standards.* The following minimum requirements shall be observed in the BC district subject to additional requirements, exceptions and modifications set forth in this article:
- (1) *Site plan requirements.* Site plan requirements must be submitted in accordance with chapter 40, article III.
 - (2) *Lot requirements and setbacks.*
 - Lot area: 30,000 square feet.
 - Lot width: 100 feet.
 - Lot setback requirements:
 - Front yards: Not less than 50 feet.
 - Side yards:
 - Not less than 20 feet on any one side, nor less than 30 feet on the side yard abutting a street.
 - Not less than 30 feet on the side yard abutting a residential zoning district.
 - Rear yards: Not less than 30 feet, nor less than 40 feet abutting a residential zoning district.
 - Lot coverage. Not less than 30 percent of the lot, parcel or tract of land shall remain as a grass plot including shrubbery, plantings, or fencing and shall be landscaped.
 - (3) *Building type and construction and roof slope.*
 - All building materials and construction must be in conformance with article IV of this chapter.
 - In the BC district, all buildings constructed of curtain wall panels of finished steel, aluminum or fiberglass shall be required to be faced with brick, wood, stone, architectural concrete cast in place or pre-cast panels on all wall surfaces.
 - (4) *Parking.* Detailed parking plans in compliance with article V, division 2 of this chapter, shall be submitted for city review and approved before a building permit may be obtained.

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- (5) *Loading.* A detailed off-street loading plan, including berths, area, and access shall be submitted to the city in conformance with the provisions of article V, division 3 of this chapter for review and approval prior to issuance of a building permit.
 - (6) *Trash receptacles.* All buildings shall provide an enclosed trash receptacle area in conformance with section 50-365.
 - (7) *Landscaping.* A detailed landscaping plan in conformance with section 50-358 shall be submitted to the council and approved before a building permit may be obtained.
 - (8) *Usable open space.* Every effort shall be made to preserve natural ponding areas and features of the land to create passive open space.
 - (9) *Signage.* A comprehensive sign plan must be submitted in conformance with section 50-7.

(Code 1985, § 11.67)

Sec. 50-79. I-1 Light Industrial District.

- (a) *Purpose.* The purpose of the I-1 Light Industrial District is to provide for the establishment of warehousing and light industrial development. The overall character of the I-1 district is intended to have an office/warehouse character, thus industrial uses allowed in this district shall be limited to those which can compatibly exist adjacent to both lower intensity business uses and high intensity manufacturing uses.
- (b) *Permitted uses.* The following are permitted uses in an I-1 district:
 - (1) All permitted uses as allowed in the B-W district.
 - (2) Trade school.
 - (3) Laboratories.
 - (4) The manufacturing, compounding, assembly, packaging, treatment, or storage of products and materials.
 - (5) Commercial printing establishments.
- (c) *Accessory uses.* The following are permitted accessory uses in an I-1 district: all permitted accessory uses as allowed in the B-W district.
- (d) *Conditional uses.* The following are conditional uses in an I-1 district which requires a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter: Industrial planned unit development as regulated by article III of this chapter.
- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in an I-1 district, subject to additional requirements, exceptions and modifications set forth in this chapter:
 - (1) Lot area: 40,000 square feet.
 - (2) Lot width: 100 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 50 feet.
 - b. Side yards: Not less than 30 feet on any one side, nor less than 50 feet on the side yard abutting a street.
 - c. Rear yards: 30 feet.

(Code 1985, § 11.70)

Sec. 50-80. I-2 Heavy Industrial District.

- (a) *Purpose.* The purpose of the I-2 Heavy Industrial District is to provide for the establishment of heavy industrial and manufacturing development and use which because of the nature of the product or character of activity requires isolation.
- (b) *Application of performance requirements.* All uses provided for under the I-2 district shall show proof of ability to comply with the performance requirements of this chapter prior to issuance of any construction permit.
- (c) *Permitted uses.* The following are permitted uses in an I-2 district:
 - (1) Any use permitted in the I-1 district.
 - (2) Automobile major repair.
- (d) *Accessory uses.* All permitted accessory uses allowed in an I-1 district are permitted accessory uses in an I-2 district.
- (e) *Conditional uses.* The following are conditional uses in an I-2 district which requires a conditional use permit based upon procedures set forth and regulated by article XIII, division 3 of this chapter:
 - (1) All conditional uses allowed in an I-1 district.
 - (2) Storage, utilization or manufacture of materials or products which could decompose by demolition.
 - (3) Refuse and garbage disposal.
 - (4) Crude oil, gasoline, or other liquid storage tanks.
- (f) *Lot requirements and setbacks.* The following minimum requirements shall be observed in an I-2 district subject to additional requirements, exceptions and modifications set forth in this chapter:
 - (1) Lot area: 40,000 square feet.
 - (2) Lot width: 100 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 40 feet.
 - b. Side yards:
 - 1. Not less than 15 feet on any one side, nor less than 40 feet on the side yard abutting a street.
 - 2. Side yards abutting residentially zoned property; not less than 40 feet on the side abutting the residentially zoned property.
 - c. Rear yards: 30 feet.

(Code 1985, § 11.71)

Sec. 50-81. I-3 District (Reserved).

Sec. 50-82. I-4 Airport Industrial District.

- (a) *Purpose.* The purpose of the I-4 Airport Industrial District is to provide specifically for the regulation of uses located adjacent to or near an airport.

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- (b) *Permitted uses.* The following are permitted uses in an I-4 District:
- (1) All permitted uses as allowed in the I-2 District.
 - (2) Aircraft hangars.
 - (3) Flight based operations, including maintenance, sales and charter activities.
 - (4) Aircraft repair.
- (c) *Accessory uses.* The following are permitted accessory uses in an I-4 district:
- (1) All permitted accessory uses as allowed in an I-2 district.
 - (2) Semi-truck parking.
- (d) *Conditional uses.* The following are conditional uses in an I-4 district which requires a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter:
- (1) Industrial planned unit development as regulated by article III of this chapter.
 - (2) Open and outdoor service, storage, sale and rental as a principal or accessory uses provided that:
 - a. Outdoor services, sales and storage are fenced and screened from view of neighboring residential use or an abutting R district in compliance with section 50-358.
 - b. Tie-down facilities are provided for aircraft stored outdoors.
 - c. All lighting is hooded and so directed that the light source is not visible from the public right-of-way or from neighboring residences and is in compliance with section 50-360.
 - d. The use does not take up parking space as required for conformity to this chapter.
 - e. Sales, service and storage areas are grassed or surfaced to control dust.
 - f. The provisions of section 50-699 are considered and satisfactorily met.
- (e) *Lot requirements, setbacks and building standards.* The following minimum requirements shall be observed in an I-4 district, subject to additional requirements, exceptions and modifications set forth in this chapter:
- (1) Lot area: 40,000 square feet.
 - (2) Lot width: 100 feet.
 - (3) Setbacks:
 - a. Front yards: Not less than 40 feet.
 - b. Side yards: Not less than 15 feet on any one side, nor less than 40 feet on the side yard abutting a street.
 - (4) Building requirements. Totally metal sided structures will be allowed as a permitted use, as well as all other such structures which comply with the uniform building code.

(Code 1985, § 11.73)

Sec. 50-83. PUD Planned Unit Development District.

- (a) *Purpose.* The purpose of the PUD Planned Unit Development District is to provide for the integration and coordination of land parcels as well as the combination of varying types of residential, commercial and industrial uses.

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- (b) *Application.* All permitted, permitted accessory, or conditional uses contained in sections 50-59 through 50-82 shall be treated as potentially permitted uses within a PUD district.
 - (c) *Special procedures.* Whether requested as a rezoning or initially established by city action alone, a PUD Planned Unit Development District shall be established and governed subject to the amendment and procedure requirements as outlined in article XIII, division 2 of this chapter, plus the procedures and conditions imposed by article III of this chapter.

(Code 1985, § 11.80)

Sec. 50-84. P/OS Parks and Open Space Zoning District.

- (a) *Purpose.* The purpose of the P/OS Parks and Open Space District is to provide for, identify, preserve and enhance public and private open space, natural areas, and improved park and recreational areas that are set aside for recreation, conservation, preservation, and cultural activities, primarily including open and outdoor areas, as well as support and ancillary structures and facilities.
- (b) *Permitted uses.* The following uses are permitted in the P/OS district:
 - (1) Publicly owned parks, golf courses, playfields, natural areas, and recreational uses and directly related buildings and structures.
 - (2) Other uses customary and incidental to parks, open space and recreational uses.
 - (3) Essential services.
 - (4) Cellular telephone antenna located upon a public structure as regulated by section 50-511.
- (c) *Accessory uses.* The following uses are permitted accessory uses in the P/OS district:
 - (1) Off-street parking as regulated by article V, division 2 of this chapter.
 - (2) Offices accessory to a permitted or conditional principal use.
 - (3) Gardening and other horticultural uses.
 - (4) Decorative landscape structures/features.
 - (5) Other uses customary and incidental to parks, open space and recreational uses.
 - (6) Public utility structures and facilities including sanitary sewer, storm sewer, water, electrical, and similar facilities.
- (d) *Conditional uses.* The following are conditional uses in the P/OS district which requires a conditional use permit based upon procedures set forth in and regulated by article XIII, division 3 of this chapter:
 - (1) Off-street parking as a principal use as regulated by article V, division 2 of this chapter.
 - (2) Cemeteries or memorial gardens, provided that:
 - a. Adequate screening from abutting and adjoining residential uses and landscaping is provided.
 - b. The use meets the minimum setback requirements for principal structures.
 - c. Adequate on-site roads and traffic control are provided to avoid conflicts with neighboring land.
 - (3) Community centers provided that:
 - a. Adequate screening from abutting and adjoining residential uses and landscaping is provided.
 - b. Adequate off-street parking and access is provided and that such parking is adequately screened and landscaped from adjoining and abutting residential uses.

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- c. Adequate off-street loading and service entrances are provided and regulated where applicable by article V, division 3 of this chapter.
- (4) Private golf courses, provided the following requirements are satisfied:
- a. Clubhouses containing the following accessory uses may be permitted, but shall be restricted by the size of the premises and the potential impacts on surrounding developments:
 - 1. Locker rooms.
 - 2. Meeting rooms.
 - 3. Pro shops.
 - 4. Restaurants and bars.
 - b. Fairways and greens shall be designed with buffer areas that provide protection to surrounding development from golf course activity.
 - c. A gradual physical and visual transition shall be provided between the driving range and any adjacent areas with natural vegetation.
 - d. All maintenance facilities shall be located on the premises in a manner that minimizes visual impacts on surrounding development.
 - 1. Wind energy conversion systems (WECS) as regulated by section 50-486.
 - 2. Cellular telephone antennas and towers not located upon a public structure as regulated by section 50-511.
- (e) *Lot requirements and setbacks.* The following minimum requirements shall be observed in the P/OS district, subject to additional requirements, exceptions and modifications set forth in this chapter:
- (1) Lot area: None.
 - (2) Setbacks for buildings: Setbacks in yards abutting other districts shall be double those of the abutting district, or the following, whichever is greater:
 - a. Front yards: Not less than 30 feet.
 - b. Side yards:
 - 1. Interior lots: Not less than 15 feet.
 - 2. Corner lots: Not less than 20 feet on a side yard abutting a public street.
 - c. Rear yards: 20 feet.

(Code 1985, § 11.83)

Secs. 50-85—50-111. Reserved.

DIVISION 3. SHORELAND OVERLAY DISTRICT

Sec. 50-112. Statutory authorization and policy.

- (a) *Statutory authorization.* This division is adopted pursuant to the authorization and policies contained in the shoreland management standards, Minn. R. 6120.2500—6120.3900, the planning and zoning enabling legislation in M.S.A. ch. 462.

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- (b) *Policy.* The uncontrolled use of shorelands of the city affects the public health, safety and general welfare not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety and welfare to provide for the wise subdivision, use and development of shorelands of public waters. The state legislature has delegated responsibility to local governments of the state to regulate the subdivision, use and development of shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is recognized by the city.

(Code 1985, § 11.81(1))

Sec. 50-113. General provisions and definitions.

- (a) *Jurisdiction.* The provisions of this district shall apply to the shorelands of the public water bodies as classified in section 50-115. Pursuant to Minn. R. 6120.2500—6120.3900, no lake, pond or flowage less than ten acres in size need be regulated in the city's shoreland regulations. A body of water created by a private user where there was no previous shoreland may, at the discretion of the council, be exempt from this section. Shoreland areas are defined as land located within the following distances from public waters:

- (1) 1,000 feet from the ordinary high-water level of a lake, pond or flowage; and
- (2) 300 feet from a river or stream; or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater.

The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the commissioner.

- (b) *Compliance.* The use of any shoreland of public waters; the size and shape of lots; the use, size, type and location of structures on lots; the installation and maintenance of water supply and waste treatment systems, the grading and filling of any shoreland area; the cutting of shoreland vegetation; and the subdivision of land shall be in full compliance with the terms of this section and other applicable regulations.
- (c) *Enforcement.* The city is responsible for the administration and enforcement of this section. It is unlawful to violate any of the provisions of this section or to fail to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses). Violations of this section can occur regardless of whether or not a permit is required for a regulated activity pursuant to section 50-114.
- (d) *Interpretation.* In their interpretation and application, the provisions of this section shall be held to be minimum requirements and shall be liberally construed in favor of the council and shall not be deemed a limitation or repeal of any other powers granted by state statutes.
- (e) *Abrogation and greater restrictions.* It is not intended by this section to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section imposes greater restrictions, the provisions of this section shall prevail.
- (f) *Definitions.* Unless specifically defined in section 1-2, words or phrases used in this section shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this section its most reasonable application. For the purpose of this section, the terms "must" and "shall" are mandatory and are not permissive. All distances, unless otherwise specified, shall be measured horizontally.

(Code 1985, § 11.81(2))

Sec. 50-114. Administration.

(a) *Permits required.*

- (1) A permit is required for the construction of buildings or building additions (and including such related activities as construction of decks and signs), the installation or alteration of sewage treatment systems, and those grading and filling activities not exempted by section 50-116(4)c. Application for a permit shall be made to the zoning administrator on the forms provided. The application shall include the necessary information so that the site's suitability for the intended use can be determined and that a compliant sewage treatment system will be provided.
- (2) A permit authorizing an addition to an existing structure shall stipulate that an identified nonconforming sewage treatment system, as defined by section 50-116(h) shall be reconstructed or replaced in accordance with the provisions of this section.

(b) *Certificate of zoning compliance.* The zoning administrator shall issue a certificate of zoning compliance for each activity requiring a permit, as specified in subsection (a) of this section. This certificate will specify that the use of land conforms to the requirements of this section. Any use, arrangement or construction at variance with that authorized by permit shall be deemed a violation of this section and shall be punishable as provided in section 50-113(c).

(c) *Variances.*

- (1) Variances may only be granted in accordance with M.S.A. ch. 462 as applicable. A variance may not circumvent the general purposes and intent of this section. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. Conditions may be imposed in the granting of a variance to ensure compliance and to protect adjacent properties and the public interest. In considering a variance request, the council must also consider whether the property owner has reasonable use of the land without the variance, whether the property is used seasonally or year-round, whether the variance is being requested solely on the basis of economic considerations, and the characteristics of development on adjacent properties.
- (2) The council shall hear and decide requests for variances in accordance with article XIII, division 3 of this chapter. When a variance is approved after the department of natural resources has formally recommended denial in the hearing record, the notification of the approved variance required in subsection (d) of this section shall also include the council's summary of the public record/testimony and the findings of facts and conclusions which supported the issuance of the variance.
- (3) For existing developments, the application for variance must clearly demonstrate whether a conforming sewage treatment system is present for the intended use of the property. The variance, if issued, must require reconstruction of a nonconforming sewage treatment system.

(d) *Notifications to the department of natural resources.*

- (1) Copies of all notices of any public hearings to consider variances, amendments or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked at least ten days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.
- (2) A copy of approved amendments and subdivisions/plats, and final decisions granting variances or conditional uses under local shoreland management controls must be sent to the commissioner or the commissioner's designated representative and postmarked within ten days of final action.

(Code 1985, § 11.81(3))

Sec. 50-115. Shoreland classification system and land use districts.

- (a) *Shoreland classification system.* The public waters of the city have been classified in the following subsections consistent with the criteria found in Minn. R. 6120.3300 and the protected waters inventory map for the county:
- (1) *Shoreland area.* The shoreland area for the waterbodies listed in subsections (a)(2) and (3) of this section, shall be as defined in section 50-113(a) and as shown on the official zoning map.
 - (2) *Lakes.*
 - a. Natural environment lakes are generally small, often shallow lakes with limited capacities for assimilating the impacts of development and recreational use. They often have adjacent lands with substantial constraints for development such as high-water tables, exposed bedrock, and unsuitable soils. These lakes, particularly in rural areas, usually do not have much existing development or recreational use. Natural environment lakes subject to this division are Mary Lake (86-49) and Albert Lake (86-129).
 - b. Recreational development lakes are generally medium-sized lakes of varying depths and shapes with a variety of landform, soil, and groundwater situations on the lands around them. They often are characterized by moderate levels of recreational use and existing development. Development consists mainly of seasonal and year-round residences and recreational-oriented commercial uses. Many of these lakes have capacities for accommodating additional development and use. Recreational development lakes subject to this division are Varner Lake (86-91) and Mink Lake (86-88).
 - c. General development lakes are generally large, deep lakes or lakes of varying sizes and depths with high levels and mixes of existing development. These lakes often are extensively used for recreation and, except for the very large lakes, are heavily developed around the shore. Second and third tiers of development are fairly common. The larger examples in this class can accommodate additional development and use. General development lakes subject to this division are Pulaski Lake (86-53) and Buffalo Lake (86-90).
 - (3) *Rivers and streams.* Tributary river segments consist of watercourses mapped in the protected waters inventory that have not been assigned one of the river classes. These segments have a wide variety of existing land and recreational use characteristics. The segments have considerable potential for additional development and recreational use, particularly those located near roads and cities. Tributary river segments subject to this division are the unnamed tributary to Buffalo and the unnamed tributary to Mary Lake.
- (b) *Land use district descriptions.*
- (1) *Criteria for designation.* The land use districts in subsection (b)(2) of this section, and the delineation of a land use district's boundaries on the official zoning map, must be consistent with the goals, policies, and objectives of the city's comprehensive land use plan and the following criteria, considerations and objectives:
 - a. General considerations and criteria for all land uses within the shoreland overlay district.
 1. Preservation of natural areas;
 2. Present ownership and development of shoreland areas.
 3. Shoreland soil types and their engineering capabilities;
 4. Topographic characteristics;

5. Vegetative cover;
 6. In-water physical characteristics, values, and constraints;
 7. Recreational use of the surface water;
 8. Road and service center accessibility;
 9. Socioeconomic development needs and plans as they involve water and related land resources;
 10. The land requirements of industry which, by its nature, requires location in shoreland areas; and
 11. The necessity to preserve and restore certain areas having significant historical or ecological value.
- b. Factors and criteria for planned unit developments.
1. Existing recreational use of the surface waters and likely increases in use associated with planned unit developments;
 2. Physical and aesthetic impacts of increased density;
 3. Suitability of lands for the planned unit development approach;
 4. Level of current development in the area; and
 5. Amounts and types of ownership of undeveloped lands.

- (2) *Land use districts.* The land use designations for the district shall follow the permitted, accessory, and conditional use designations as defined and outlined in the base zoning districts found in article II of this chapter and shall be properly delineated on the official zoning map for the shorelands of the city. These land use districts are in conformance with the criteria specified in Minn. R. 6120.3200(3).

(Code 1985, § 11.81(4))

Sec. 50-116. Zoning and water supply/sanitary provisions.

- (a) *Lot area and width standards.* The lot area (in square feet) and lot width standards (in feet) for single, duplex, triplex and quad residential lots created after the effective date of the ordinance from which this section is derived for the lake and river/stream classifications are the following:

- (1) *Unsewered lakes.*

- a. *Natural environment.*

| | <i>Riparian Lots</i> | | <i>Non-Riparian Lots</i> | |
|---------|----------------------|--------------|--------------------------|--------------|
| | <i>Area</i> | <i>Width</i> | <i>Area</i> | <i>Width</i> |
| Single | 80,000 | 200 | 80,000 | 200 |
| Duplex | 120,000 | 300 | 160,000 | 400 |
| Triplex | 160,000 | 400 | 240,000 | 600 |
| Quad | 200,000 | 500 | 320,000 | 800 |

- b. *Recreational development.*

| | <i>Riparian Lots</i> | | <i>Non-Riparian Lots</i> | |
|--|----------------------|--------------|--------------------------|--------------|
| | <i>Area</i> | <i>Width</i> | <i>Area</i> | <i>Width</i> |

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| | | | | |
|---------|---------|-----|---------|-----|
| Single | 40,000 | 150 | 40,000 | 150 |
| Duplex | 80,000 | 225 | 80,000 | 265 |
| Triplex | 120,000 | 300 | 120,000 | 375 |
| Quad | 160,000 | 375 | 160,000 | 490 |

c. *General development.*

| | <i>Riparian Lots</i> | | <i>Non-Riparian Lots</i> | |
|---------|----------------------|--------------|--------------------------|--------------|
| | <i>Area</i> | <i>Width</i> | <i>Area</i> | <i>Width</i> |
| Single | 40,000 | 150 | 40,000 | 150 |
| Duplex | 40,000 | 180 | 80,000 | 265 |
| Triplex | 60,000 | 260 | 120,000 | 375 |
| Quad | 80,000 | 490 | 160,000 | 490 |

(2) *Sewered lakes.*

a. *Natural environment.*

| | <i>Riparian Lots</i> | | <i>Non-Riparian Lots</i> | |
|---------|----------------------|--------------|--------------------------|--------------|
| | <i>Area</i> | <i>Width</i> | <i>Area</i> | <i>Width</i> |
| Single | 40,000 | 125 | 20,000 | 125 |
| Duplex | 70,000 | 225 | 35,000 | 220 |
| Triplex | 100,000 | 325 | 52,000 | 315 |
| Quad | 130,000 | 425 | 65,000 | 410 |

b. *Recreational development.*

| | <i>Riparian Lots</i> | | <i>Non-Riparian Lots</i> | |
|---------|----------------------|--------------|--------------------------|--------------|
| | <i>Area</i> | <i>Width</i> | <i>Area</i> | <i>Width</i> |
| Single | 20,000 | 75 | 15,000 | 75 |
| Duplex | 35,000 | 135 | 26,000 | 135 |
| Triplex | 50,000 | 195 | 38,000 | 190 |
| Quad | 65,000 | 255 | 49,000 | 245 |

c. *General development.*

| | <i>Riparian Lots</i> | | <i>Non-Riparian Lots</i> | |
|---------|----------------------|--------------|--------------------------|--------------|
| | <i>Area</i> | <i>Width</i> | <i>Area</i> | <i>Width</i> |
| Single | 15,000 | 85 | 10,000 | 85 |
| Duplex | 26,000 | 135 | 17,500 | 135 |
| Triplex | 38,000 | 195 | 25,000 | 190 |
| Quad | 49,000 | 255 | 32,500 | 245 |

- (3) *River/stream lot width standards.* There are no minimum lot size requirements for rivers and streams. The lot width standards for single, duplex, triplex and quad residential developments for the six river/stream classifications are:

| | <i>Tributary</i> | |
|---------|------------------|--------------|
| | <i>No Sewer</i> | <i>Sewer</i> |
| Single | 100 | 75 |
| Duplex | 150 | 115 |
| Triplex | 200 | 150 |
| Quad | 250 | 190 |

(4) *Additional special provisions.*

- a. Residential subdivisions with dwelling unit densities exceeding those in the tables in subsections (a)(2) and (3) of this section, can only be allowed if designed and approved as residential planned unit developments under section 50-119. Only land above the ordinary high-water level of public waters can be used to meet lot area standards, and lot width standards must be met at both the ordinary high-water level and at the building line. The sewer lot area dimensions in subsection (a)(2) of this section can only be used if publicly owned sewer system service is available to the property.
- b. Subdivisions of duplexes, triplexes, and quads on natural environment lakes must also meet the following standards:
 1. Each building must be set back at least 200 feet from the ordinary high-water level;
 2. Each building must have common sewage treatment and water systems in one location and serve all dwelling units in the building;
 3. Watercraft docking facilities for each lot must be centralized in one location and serve all dwelling units in the building; and
 4. No more than 25 percent of a lake's shoreline can be in duplex, triplex, or quad developments.
- c. Lots intended as controlled accesses to public waters or as recreation areas for use by owners of non-riparian lots within subdivisions are permissible and must meet or exceed the following standards:
 1. They must meet the width and size requirements for residential lots and be suitable for the intended uses of controlled access lots.
 2. If docking, mooring, or over-water storage of more than six watercraft is to be allowed at a controlled access lot, then the width of the lot (keeping the same lot depth) must be increased by the percent of the requirements for riparian residential lots for each watercraft beyond six, consistent with the following table:

Controlled Access Lot Frontage Requirements

| <i>Ratio of Lake Size to Shore Length Access/Miles</i> | <i>Required Increase in Frontage (percent)</i> |
|--|--|
| Less than 100 | 25 |
| 100—200 | 20 |
| 201—300 | 15 |
| 301—400 | 10 |
| Greater than 400 | 5 |

- d. They must be jointly owned by all purchasers of lots in the subdivision or by all purchasers of non-riparian lots in the subdivision who are provided riparian access rights on the access lot.
- e. Covenants or other equally effective legal instruments must be developed that specify which lot owners have authority to use the access lot and what activities are allowed. The activities may include watercraft launching, loading, storage, beaching, mooring, or docking. They must also include other outdoor recreational activities that do not significantly conflict with general public use of the public water or the enjoyment of normal property rights by adjacent property owners. Examples of non-significant conflict activities include swimming, sunbathing, or picnicking. The covenants must limit the total number of vehicles allowed to be parked and the total number of watercraft allowed to be continuously moored, docked, or stored over water, and must require centralization of all common facilities and activities in the most suitable locations on the lot to minimize topographic and vegetation alterations. The covenants must also address the need for sanitary facilities, rubbish and storage collection, and require all parking areas, storage buildings, and other facilities and adjacent lots to be screened by vegetation or topography as much as practical from view from the public water, assuming summer, leaf-on conditions.

(b) *Placement, design, and height of structures.*

- (1) *Placement of structures on lots.* When more than one setback applies to a site, structures and facilities must be located to meet all setbacks. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high-water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone. Structures shall be located as follows:

- a. *Sewage setbacks.* Structure and on-site sewage system setbacks (in feet) from ordinary high-water level.

| | | Setbacks | | | |
|--------------------------|--------------|------------|---------|------------------|--------|
| | | Structures | | Sewage Treatment | |
| Classes of Public Waters | | Unsewered | Sewered | | System |
| Lakes | | | | | |
| | Natural | | | | |
| | Environment | 150 | 150 | | 150 |
| | Recreational | | | | |
| | Development | 100 | 75 | | 75 |
| | General | | | | |
| | Development | 75 | 50 | | 50 |
| | Rivers | | | | |
| | Tributary | 100 | 50 | | 75 |

- b. *Additional structure setbacks.* The following additional structure setbacks apply, regardless of the classification of the waterbody.

| <i>Setback From</i> | <i>Setback (in feet)</i> |
|---------------------|--------------------------|
| Top of bluff | 30 |
| Unplatted cemetery | 50 |

| | |
|---|----|
| Right-of-way line of federal, state, or county highway | 50 |
| Right-of-way line of town road, public street, or other roads or streets not classified | 20 |

- c. *Bluff impact zones.* Structures and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.
- (2) *Design criteria for structures.*
 - a. *High water elevations.* Structures must be placed in accordance with any floodplain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or floodproofed must be at a level at least three feet above the highest known water level, or three feet above the ordinary high-water level, whichever is higher.
 - b. *Stairways, lifts and landings.* Stairways and lifts are the preferred alternative to major topographic alterations for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements:
 1. Stairways and lifts must not exceed four feet in width on residential lots. Wider stairways must be used for commercial properties, public open space recreational properties, and planned unit developments;
 2. Landings for stairways and lifts on residential lots must not exceed 32 square feet in area. Landings larger than 32 square feet may be used for commercial properties, public open space recreational properties, and planned unit developments;
 3. Canopies or roofs are not allowed on stairways, lifts, or landings;
 4. Stairways, lifts and landings may be either constructed above the ground on posts or pilings, or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion;
 5. Stairways, lifts and landings must be located in the most visually inconspicuous portions of lots, as viewed from the surface of the public water assuming summer, leaf-on conditions, whenever practical; and
 6. Facilities such as ramps, lifts or mobility paths for physically disabled persons are also allowed for achieving access to shore areas, provided that the dimensional and performance standards of items listed in subsection (b)(2)b.1 through 5 of this section, are complied with in addition to the requirements of Minn. R. ch. 1340.
 - c. *Significant historic sites.* No structure may be placed on a significant historic site in a manner that affects the values of the site unless adequate information about the site has been removed and documented in a public repository.
 - d. *Steep slopes.* The zoning administrator must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetation screening of structures, vehicles, and other facilities as viewed from the surface of public waters, assuming summer, leaf-on vegetation.
- (3) *Height of structures.* All structures in residential districts, except churches and nonresidential agricultural structures, must not exceed 25 feet in height. Height of structure is as defined in section 50-3.

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- (c) *Shoreland alterations.* Alterations of vegetation and topography will be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic value, prevent bank slumping, and protect fish and wildlife habitat.

(1) *Vegetation alterations.*

- a. Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by subsection (d) of this section are exempt from the vegetation alteration standards of this subsection.
- b. Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in subsections (f)(1) and (2) of this section is allowed subject to the following standards:
 1. Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed. Intensive vegetation clearing for forest land conversion to another use outside of these areas is allowable as a conditional use if an erosion control and sedimentation plan is developed and approved by the soil and water conservation district in which the property is located.
 2. In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, livestock watering areas, beach and watercraft access areas, and permitted water-oriented accessory structures or facilities, provided that:
 - (i) The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer leaf-on conditions, is not substantially reduced;
 - (ii) Along rivers, existing shading of water surfaces is preserved; and
 - (iii) The provisions of subsection (c)(1) of this section are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.

(2) *Topographic alterations/grading and filling.*

- a. Grading and filling and excavations necessary for the construction of structures, sewage treatment systems, and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling provisions of this subsection must be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways.
- b. Public roads and parking areas as regulated by subsection (d) of this section.
- c. Notwithstanding subsections (c)(2)a and b of this section, a grading and filling permit will be required for:
 1. The movement of more than ten cubic yards of material on steep slopes or within shore or bluff impact zones; and
 2. The movement of more than 50 cubic yards of material outside of steep slopes and shore and bluff impact zones.
- d. The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances and subdivision approvals:

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1. Grading or filling in any Type 2, 3, 4, 5, 6, 7 or 8 wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland:

- (i) Sediment and pollution trapping and retention;
- (ii) Storage of surface runoff to prevent or reduce flood damage;
- (iii) Fish and wildlife habitat;
- (iv) Recreational use;
- (v) Shoreline or bank stabilization; and
- (vi) Noteworthiness, including special qualities such as historic significance, critical habitat or endangered plants and animals, or others.

The applicant is responsible for determining whether the wetland alteration being proposed requires permits, reviews, or approvals by other local, state, or federal agencies such as a watershed district, the state department of natural resources, or the United States Army Corps of Engineers. Documentation of such is required prior to issuance of permits.

2. Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible;
 3. Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and permanent vegetation cover must be established as soon as possible;
 4. Methods to minimize soil erosion and trap sediments before they reach any surface water feature must be used;
 5. Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local soil and water conservation districts and the federal soil conservation service;
 6. Fill or excavated material must not be placed in a manner that creates an unstable slope;
 7. Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of 30 percent or greater;
 8. Fill or excavated material must not be placed in bluff impact zones;
 9. Any alterations below the ordinary high-water level of public waters must first be authorized by the commissioner under M.S.A. § 105.42;
 10. Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties; and
 11. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet horizontal to one foot vertical, the landward extent of the riprap is within ten feet of the ordinary high-water level, and the height of the riprap above the ordinary high-water level does not exceed three feet.
- e. Connections to public waters. Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons, and harbors, must be controlled by local shoreland controls. Permission for excavations may be given only after the commissioner has approved the proposed connection to the public waters.

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- (d) *Placement and design of roads, driveways, and parking areas.*
- (1) Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local soil and water conservation district, or other applicable technical materials.
 - (2) Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no such alternatives exist, they may be placed within these areas, and must be designed to minimize adverse impacts.
 - (3) Public and private watercraft access ramps, approach roads, and access-related parking areas may be placed within shore impact zones provided the vegetative screening and erosion control conditions of this subsection are met. For private facilities, the grading and filling provisions of subsection (c)(2) of this section must be met.
- (e) *Stormwater management.* The following general and specific standards shall apply:
- (1) *General standards.*
 - a. When possible, existing natural drainageways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain stormwater runoff before discharge to public waters.
 - b. Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.
 - c. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle stormwater runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used. Preference must be given to designs using surface drainage, vegetation, and infiltration rather than buried pipes and manmade materials and facilities.
 - (2) *Specific standards.*
 - a. Impervious surface coverage of lots must not exceed 25 percent of the lot area.
 - b. When constructed facilities are used for stormwater management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts.
 - c. New constructed stormwater outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris before discharge.
- (f) *Special provisions for commercial, industrial, public/semipublic, agricultural, and forestry.*
- (1) *Standards for commercial, industrial, public and semipublic uses.*
 - a. Surface water-oriented commercial uses and industrial, public, or semipublic uses with similar needs to have access to and use of public waters may be located on parcels or lots with frontage on public waters. Those uses with water-oriented needs must meet the following standards:
 1. In addition to meeting impervious coverage limits, setbacks and other zoning standards in this section, the uses must be designed to incorporate topographic and vegetative screening of parking areas and structures;

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2. Uses that require short-term watercraft mooring for patrons must centralize these facilities and design them to avoid obstructions of navigation and to be the minimum size necessary to meet the need; and
 3. Uses that depend on patrons arriving by watercraft may use signs and lighting to convey needed information to the public, subject to the following general standards:
 - (i) No advertising signs or supporting facilities for signs may be placed in or upon public waters. Signs conveying information or safety messages may be placed in or on public waters by a public authority or under a permit issued by the county sheriff;
 - (ii) Signs may be placed, when necessary, within the shore impact zone if they are designed and sized to be the minimum necessary to convey needed information. They must only convey the location and name of the establishment and the general types of goods or services available. The signs must not contain other detailed information such as product brands and prices, must not be located higher than ten feet above the ground, and must not exceed 32 square feet in size. If illuminated by artificial lights, the lights must be shielded or directed to prevent illumination out across public waters; and
 - (iii) Other outside lighting may be located within the shore impact zone or over public waters if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This does not preclude use of navigational lights.
 - b. Uses without water-oriented needs must be located on lots or parcels without public waters frontage, or, if located on lots or parcels with public waters frontage, must either be set back double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.
- (2) *Agriculture use standards.*
- a. General cultivation farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes and shore and bluff impact zones are maintained in permanent vegetation or operated under an approved conservation plan (resource management systems) consistent with the field office technical guides of the local soil and water conservation districts or the federal soil conservation service, as provided by a qualified individual or agency. The shore impact zone for parcels with permitted agricultural land uses is equal to a line parallel to and 50 feet from the ordinary high-water level.
 - b. Animal feedlots must meet the following standards:
 1. New feedlots must not be located in the shoreland of watercourses or in bluff impact zones and must meet a minimum setback of 300 feet from the ordinary high-water level of all public waters basins.
 2. Modifications or expansions to existing feedlots that are located within 300 feet of the ordinary high-water level or within a bluff impact zone are allowed if they do not further encroach into the existing ordinary high water level setback or encroach on bluff impact zones.
 3. Forest management standards. The harvesting of timber and associated reforestation must be conducted consistent with the provisions of the state nonpoint source pollution assessment-forestry, published by the state pollution control agency, and the provisions of Forest Management Guidelines, 2012, published by the state forest resources council.

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- (g) *Conditional uses.* Conditional uses allowable within shoreland areas shall be subject to the review and approval procedures, and criteria and conditions for review of conditional uses as found in article XIII, division 3 of this chapter and any other applicable provisions of this chapter. The following additional evaluation criteria and conditions apply within shoreland areas:
- (1) *Evaluation criteria.* A thorough evaluation of the waterbody and the topographic, vegetation, and soils conditions on the site must be made to ensure:
 - a. The prevention of soil erosion or other possible pollution of public waters, both during and after construction;
 - b. The visibility of structures and other facilities as viewed from public waters is limited;
 - c. The site is adequate for water supply and on-site sewage treatment; and
 - d. The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.
 - (2) *Conditions attached to conditional use permits.* The city, upon consideration of the criteria listed in subsection (g)(1) of this section, and the purposes of this section, shall attach such conditions to the issuance of the conditional use permits as it deems necessary to fulfill the purposes of this section. Such conditions may include, but are not limited to, the following:
 - a. Increased setbacks from the ordinary high-water level;
 - b. Limitations on the natural vegetation to be removed or the requirement that additional vegetation be planted; and
 - c. Special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.
- (h) *Water supply and sewage treatment.*
- (1) *Water supply.* Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the state department of health and the state pollution control agency.
 - (2) *Sewage treatment.* Any premises used for human occupancy must be provided with an adequate method of sewage treatment, as follows:
 - a. Publicly-owned sewer systems must be used where available.
 - b. All private sewage treatment systems must meet or exceed the state pollution control agency's standards for individual sewage treatment systems contained in the document titled, "Individual Sewage Treatment Systems Standards, Chapter 7080," a copy of which is adopted by reference and made a part of this section.
 - c. On-site sewage treatment systems must be set back from the ordinary high-water level in accordance with the setbacks contained in subsection (b)(1) of this section.
 - d. All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria in subsections (h)(2)d.1 through 4 of this section. If the determination of a site's suitability cannot be made with publicly available, existing information, it shall then be the responsibility of the applicant to provide sufficient soil borings and percolation tests from on-site field investigations. The following evaluation criteria shall be applied:
 1. Depth to the highest known or calculated groundwater table or bedrock;
 2. Soil conditions, properties, and permeability;
 3. Slope;

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- 4. The existence of lowlands, local surface depressions, and rock outcrops.
 - e. Nonconforming sewage treatment systems shall be regulated and upgraded in section 50-117(3).
(Code 1985, § 11.81(5))

Sec. 50-117. Nonconformities.

All legally established nonconformities as of the effective date of this section may continue, but they will be managed according to applicable state statutes and other Code provisions for the subjects of alterations and additions, repair after damage, discontinuance of use, and intensification of use; except that the following standards will also apply in shoreland areas:

(1) *Construction and nonconforming lots of record.*

- a. Subject to the requirements of section 50-405, lots of record in the office of the county recorder on the date of enactment of local shoreland controls that do not meet the requirements of section 50-116(a), may be allowed as building sites without variances from lot size requirements, provided the use is permitted in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, and sewage treatment and setback requirements of this section are met.
- b. A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for a lot. In evaluating the variance, the board of adjustment and appeals shall consider sewage treatment and water supply capabilities or constraints of the lot and shall deny the variance if adequate facilities cannot be provided.
- c. If, in a group of two or more contiguous lots under the same ownership, any individual lot does not meet the requirements of section 50-116(a), the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of section 50-116, as much as possible.

(2) *Additions/expansions to nonconforming structures.*

- a. All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of subsection (1) of this section. Any deviation from these requirements must be authorized by a variance pursuant to section 50-114(c).
- b. Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high-water level if all of the following criteria and standards are met:
 - 1. The structure existed on the date the structure setbacks were established;
 - 2. A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure;
 - 3. The deck encroachment toward the ordinary high-water level does not exceed 15 percent of the existing setback of the structure from the ordinary high-water level or does not encroach closer than 30 feet, whichever is more restrictive; and
 - 4. The deck is constructed primarily of wood and is not roofed or screened.

(3) *Nonconforming sewage treatment systems.*

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- a. A sewage treatment system not meeting the requirements of section 50-116(h), must be upgraded, at a minimum, at any time a permit or variance of any type is required for any improvement on, or use of, the property. For the purposes of this section, a sewage treatment system shall not be considered nonconforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high-water level.
 - b. The council has, by formal resolution, notified the commissioner of its program to identify nonconforming sewage treatment systems. The city will require upgrading or replacement of any nonconforming system identified by this program within a reasonable period of time which will not exceed two years. Sewage systems installed according to all applicable local shoreland management standards adopted under M.S.A. § 105.485, in effect at the time of installation, may be considered as conforming unless they are determined to be failing, except that systems using cesspools, leaching pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above groundwater than required by the Minn. R. ch. 7080 for design of on-site sewage treatment systems, shall be considered nonconforming.

(Code 1985, § 11.81(6))

Sec. 50-118. Subdivision/platting provisions.

- (a) *Land suitability.* Each lot created through subdivision, including planned unit developments authorized under section 50-119, must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis by the city shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near shore aquatic conditions unsuitable for water based recreation, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the city.
- (b) *Consistency with other controls.* Subdivisions must conform to all official controls of the city. A subdivision will not be approved where a later variance from one or more standards in official controls would be needed to use the lots for their intended purpose. In areas not served by publicly owned sewer and water systems, a subdivision will not be approved unless domestic water systems are available and a sewage treatment system consistent with section 50-116(b) and (h), can be provided for every lot. Each lot shall meet the minimum lot size and dimensional requirements of section 50-116(a), including at least a minimum contiguous lawn area that is free of limiting factors sufficient for the construction of two standard soil treatment systems. Lots that would require use of holding tanks must not be approved.
- (c) *Information requirements.* Sufficient information must be submitted by the applicant for the city to make a determination of land suitability. The information shall include at least the following:
 - (1) Topographic contours at ten-foot intervals or less from United States Geological Survey maps or more accurate sources, showing limiting site characteristics;
 - (2) The surface water features required in state law, M.S.A. § 505.03, to be shown on plats, obtained from United States Geological Survey quadrangle topographic maps or more accurate sources;
 - (3) Adequate soils information to determine suitability for building and on-site sewage treatment capabilities for every lot from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;
 - (4) Information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near-shore aquatic conditions, including depths, types of bottom sediments,

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- and aquatic vegetation; and proposed methods for controlling stormwater runoff and erosion, both during and after construction activities;
- (5) Location of 100-year floodplain areas and floodway districts from existing adopted maps or data; and
 - (6) A line or contour representing the ordinary high-water level, the "toe" and the "top" of bluffs, and the minimum building setback distances from the top of the bluff and the lake or stream.
- (d) *Dedications.* When a land or easement dedication is a condition of subdivision approval, the approval must provide easements over natural drainage or ponding areas for management of stormwater and significant wetlands.
- (e) *Platting.* All subdivisions that create five or more lots or parcels that are 2½ acres or less in size shall be processed as a plat in accordance with M.S.A. ch. 505. No permit for construction of buildings or sewage treatment systems shall be issued for lots created after the effective date of the ordinance from which this section is derived unless the lot was approved as part of a formal subdivision.
- (f) *Controlled access or recreational lots.* Lots intended as controlled accesses to public waters or for recreational use areas for use by non-riparian lots within a subdivision must meet or exceed the sizing criteria in section 50-116(a)(4).
- (Code 1985, § 11.81(7))

Sec. 50-119. Planned unit developments (PUDs).

- (a) *Types of PUDs permissible.* Planned unit developments (PUDs) are allowed for new projects on undeveloped land, redevelopment of previously built sites, or conversions of existing buildings and land. The land use districts in which they are an allowable use are identified in the land use district descriptions in section 50-115(b)(4) and the official zoning map.
- (b) *Processing of PUDs.* Planned unit developments must be processed as a conditional use.
- (c) *Application for a PUD.* The applicant for a PUD must submit the following documents prior to final action being taken on the application request:
 - (1) A site plan or plat for the project showing locations of property boundaries, surface water features, existing and proposed structures and other facilities, land alterations, sewage treatment and water supply systems (where public systems will not be provided), and topographic contours at ten-foot intervals or less. When a PUD is a combined commercial and recreational development, the site plan or plat must indicate and distinguish which buildings and portions of the project are residential, commercial, or a combination of the two.
 - (2) A property owners association agreement (for residential PUDs) with mandatory membership, and all in accordance with the requirements of subsection (f) of this section.
 - (3) Deed restrictions, covenants, permanent easements or other instruments that:
 - a. Properly address future vegetative and topographic alterations, construction of additional buildings, beaching of watercraft, and construction of commercial buildings in residential PUDs; and
 - b. Ensure the long-term preservation and maintenance of open space in accordance with the criteria and analysis specified in subsection (f) of this section.
 - (4) When necessary, a master plan/drawing describing the project and the floor plan for all commercial structures to be occupied.

- (5) Those additional documents as requested by the zoning administrator that are necessary to explain how the PUD will be designed and will function.
- (d) *Site "suitable area" evaluations.* Proposed new or expansions to existing planned unit developments must be evaluated using the following procedures and standards to determine the suitable area for the dwelling unit/dwelling site density evaluation in section 50-116(e).
- (1) The project parcel must be divided into tiers by locating one or more lines approximately parallel to a line that identifies the ordinary high-water level at the following intervals, proceeding landward:

Shoreland Tier Dimensions

| | <i>Unsewered (feet)</i> | <i>Sewered (feet)</i> |
|--|-----------------------------|---------------------------|
| General development lakes, first tier | 200 | 200 |
| General development lakes, second and additional tiers | 267 | 200 |
| Recreational development lakes | 267 | 267 |
| Natural environment lakes | 400 | 320 |
| All river classes | 300 | 300 |

- (2) The suitable area within each tier is next calculated by excluding from the tier area all wetlands, bluffs, or land below the ordinary high-water level of public waters. This suitable area and the proposed project are then subject to either the residential or commercial planned unit development density evaluation steps to arrive at an allowable number of dwelling units or sites.
- (e) *Residential and commercial PUD density evaluation.* The procedures for determining the "base" density of a PUD and a density increase multipliers as follows. Allowable densities may be transferred from any tier to any other tier further from the waterbody but must not be transferred to any other tier closer.
- (1) *Residential PUD base density evaluation.* The suitable area within each tier is divided by the single residential lot size standard for lakes or, for rivers, the single residential lot width standard times the tier depth, unless the city has specified an alternative minimum lot size for rivers which shall then be used to yield a base density of dwelling units or sites for each tier. Proposed locations and numbers of dwelling units or sites for the residential planned unit developments are then compared with the tier, density, and suitability analysis herein and the design criteria in subsection (f) of this section.
- (2) *Commercial PUD base density evaluation.*
- Determine the average inside living area size of dwelling units or sites within each tier, including both existing and proposed units and sites. Computation of inside living area sizes need not include decks, patios, stops, steps, garages, or porches and basements, unless they are habitable space.
 - Select the appropriate floor area ratio from the following table:

Commercial Planned Unit Development
Floor Area Ratios
Public Waters Classes

| <i>Average Unit Floor Area (square feet)</i> | <i>Sewered General Development Lakes;</i> | <i>Second and Additional Tiers on</i> | <i>Natural Environment Lakes</i> |
|--|---|---|--------------------------------------|
|--|---|---|--------------------------------------|

| | <i>First Tier on Unsewered General Development Lakes; Urban Agricultural, Tributary River Segments</i> | <i>Unsewered General Development Lakes; Recreational Lakes; Transition and Forested River Segments</i> | <i>and Remote River Segments</i> |
|-------|--|--|--------------------------------------|
| 200 | 0.040 | 0.020 | 0.010 |
| 300 | 0.048 | 0.024 | 0.012 |
| 400 | 0.056 | 0.028 | 0.014 |
| 500 | 0.065 | 0.032 | 0.016 |
| 600 | 0.072 | 0.038 | 0.019 |
| 700 | 0.082 | 0.042 | 0.021 |
| 800 | 0.091 | 0.046 | 0.023 |
| 900 | 0.099 | 0.050 | 0.025 |
| 1,000 | 0.108 | 0.054 | 0.027 |
| 1,100 | 0.116 | 0.058 | 0.029 |
| 1,200 | 0.125 | 0.064 | 0.032 |
| 1,300 | 0.133 | 0.068 | 0.034 |
| 1,400 | 0.142 | 0.072 | 0.036 |
| 1,500 | 0.150 | 0.075 | 0.038 |

For average unit floor areas less than shown, use the floor area ratios listed for 200 square feet. For areas greater than shown, use the ratios listed for 1,500 square feet. For recreational camping areas, use the ratios listed at 400 square feet. Manufactured home sites in recreational camping areas shall use a ratio equal to the size of the manufactured home, or if unknown, the ratio listed for 1,000 square feet.

- c. Multiply the suitable area within each tier by the floor area ratio to yield total floor area for each tier allowed to be used for dwelling units or sites.
- d. Divide the total floor area by tier computed in subsection (e)(2)c of this section by the average inside living area size determined in subsection (e)(2)a of this section. This yields a base number of dwelling units and sites for each tier.
- e. Proposed locations and numbers of dwelling units or sites for the commercial planned unit development are then compared with the tier, density and suitability analysis herein and the design criteria in section 50-118.

(3) *Density increase multipliers.*

- a. Increases to the dwelling unit or dwelling site base densities previously determined are allowable if the dimensional standards in section 50-116 are met or exceeded and the design criteria in section 50-118(f) are satisfied. The allowable density increases in subsection (e)(3)b of this section, will only be allowed if structure setbacks from the ordinary high-water level are increased to at least 50 percent greater than the minimum setback, or the impact on the

waterbody is reduced an equivalent amount through vegetative management, topography, or additional means acceptable to the city and the setback is at least 25 percent greater than the minimum setback.

- b. Allowable dwelling unit or dwelling site density increases for residential or commercial planned unit developments:

Dwelling Site Density Increases

| <i>Density Evaluation Tiers</i> | <i>Maximum Density Increase Within Each Tier (percent)</i> |
|---------------------------------|--|
| First | 50 |
| Second | 100 |
| Third | 200 |
| Fourth | 200 |
| Fifth | 200 |

(f) *Maintenance and design criteria.*

(1) *Maintenance and administration requirements.*

- a. Before final approval of a planned unit development, adequate provisions must be developed for preservation and maintenance in perpetuity of open spaces and for the continued existence and functioning of the development.
- b. Open space preservation. Deed restrictions, covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means must be provided to ensure long-term preservation and maintenance of open space. The instruments must include all of the following protections:
1. Commercial uses prohibited (for residential PUDs);
 2. Vegetation and topographic alterations other than routine maintenance prohibited;
 3. Construction of additional buildings or storage of vehicles and other materials prohibited;
 4. Uncontrolled beaching of watercraft prohibited; and
 5. Development organization and functioning. Unless an equally effective alternative community framework is established, when applicable, all residential planned unit developments must use an owners' association with the following features:
 - (i) Membership must be mandatory for each dwelling unit or site purchaser and any successive purchasers;
 - (ii) Each member must pay a pro-rata share of the association's expenses, and unpaid assessments can become liens on units or sites;
 - (iii) Assessments must be adjustable to accommodate changing conditions; and
 - (iv) The association must be responsible for insurance, taxes, and maintenance of all commonly owned property and facilities.

(2) *Open space requirements.* Planned unit developments must contain open space meeting all of the following criteria:

- a. At least 50 percent of the total project area must be preserved as open space;

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- b. Dwelling units or sites, road rights-of-way, or land covered by road surfaces, parking areas, or structures, except water-oriented accessory structures or facilities, are developed areas and shall not be included in the computation of minimum open space;
 - c. Open space must include areas with physical characteristics unsuitable for development in their natural state, and areas containing significant historic sites or unplatted cemeteries;
 - d. Open space may include outdoor recreational facilities for use by owners of dwelling units or sites, by guests staying in commercial dwelling units or sites, and by the general public;
 - e. Open space may include subsurface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems;
 - f. Open space must not include commercial facilities or uses, but may contain water-oriented accessory structures or facilities;
 - g. The appearance of open space areas, including topography, vegetation, and allowable uses, must be preserved by use of restrictive deed covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means; and
 - h. The shore impact zone, based on normal structure setbacks, must be included as open space. For residential PUDs, at least 50 percent of the shore impact zone area of existing developments or at least 70 percent of the shore impact zone area of new developments must be preserved in its natural existing state. For commercial PUDs, at least 50 percent of the shore impact zone must be preserved in its natural state.
- (3) *Erosion control and stormwater management.* Erosion control and stormwater management plans must be developed and the PUD must:
- a. Be designed, and the construction managed, to minimize the likelihood of serious erosion occurring either during or after construction. This must be accomplished by limiting the amount and length of time of bare ground exposure. Temporary ground covers, sediment entrapment facilities, vegetated buffer strips, or other appropriate techniques must be used to minimize erosion impacts on surface water features. Erosion control plans approved by a soil and water conservation district may be required if project size and site physical characteristics warrant; and
 - b. Be designed and constructed to effectively manage reasonably expected quantities and qualities of stormwater runoff. Impervious surface coverage within any tier must not exceed 25 percent of the tier area, except that for commercial PUDs, 35 percent impervious surface coverage may be allowed in the first tier of general development lakes with an approved stormwater management plan and consistent with section 50-116(c).
- (4) *Centralization and design of facilities.* Centralization and design of facilities and structures must be done according to the following standards:
- a. Planned unit developments must be connected to publicly owned water supply and sewer systems, if available. On-site water supply and sewage treatment systems must be centralized and designed and installed to meet or exceed applicable standards or rules of the state department of health and section 50-116(b) and (h). On-site sewage treatment systems must be located on the most suitable areas of the development, and sufficient lawn area free of limiting factors must be provided for a replacement soil treatment system for each sewage system;
 - b. Dwelling units or sites must be clustered into one or more groups and located on suitable areas of the development. They must be designed and located to meet or exceed the following dimensional standards for the relevant shoreland classification: setback from the ordinary high-water level, elevation above the surface water features, and maximum height. Setbacks from the

ordinary high-water level must be increased in accordance with subsection (e)(3) of this section for developments with density increases;

- c. Shore recreation facilities, including, but not limited to, swimming areas, docks, and watercraft mooring areas and launching ramps, must be centralized and located in areas suitable for them. Evaluation of suitability must include consideration of land slope, water depth, vegetation, soils, depth to groundwater and bedrock, or other relevant factors. The number of spaces provided for continuous beaching, mooring, or docking of watercraft must not exceed one for each allowable dwelling unit or site in the first tier (notwithstanding existing mooring sites in an existing commercially used harbor). Launching ramp facilities, including a small dock for loading and unloading equipment, may be provided for use by occupants of dwelling units or sites located in other tiers;
 - d. Structures, parking areas, and other facilities must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks, color, or other means acceptable to the city, assuming summer, leaf-on conditions. Vegetative and topographic screening must be preserved, if existing, or may be required to be provided;
 - e. Accessory structures and facilities, except water-oriented accessory structures, must meet the required principal structure setback and must be centralized; and
 - f. Water-oriented accessory structures and facilities may be allowed if they meet or exceed design standards contained in section 50-116(b) are centralized.
- (g) *Conversions.* The city may allow existing resorts or other land uses and facilities to be converted to residential and planned unit developments if all of the following standards are met:
- (1) Proposed conversions must be initially evaluated using the same procedures for residential planned unit developments involving all new construction. Inconsistencies between existing features of the development and these standards must be identified.
 - (2) Deficiencies involving water supply and sewage treatment, structure color, impervious coverage, open space, and shore recreation facilities must be corrected as part of the conversion or as specified in the conditional use permits.
 - (3) Shore and bluff impact zone deficiencies must be evaluated and reasonable improvements made as part of the conversion. These improvements must include, where applicable, the following:
 - a. Removal of extraneous buildings, docks, or other facilities that no longer need to be located in shore or bluff impact zones;
 - b. Remedial measures to correct erosion sites and improve vegetative cover and screening of buildings and other facilities as viewed from the water; and
 - c. If existing dwelling units are located in shore or bluff impact zones, conditions are attached to approvals of conversions that preclude exterior expansions in any dimension or substantial alterations. The conditions must also provide for future relocation of dwelling units, where feasible, to other locations, meeting all setback and elevation requirements when they are rebuilt or replaced.
 - (4) Existing dwelling units or dwelling site densities that exceed standards in subsection (e) of this section may be allowed to continue but must not be allowed to be increased, either at the time of conversion or in the future. Efforts must be made during the conversion to limit impacts of high densities by requiring seasonal use, improving vegetative screening, centralizing shore recreation facilities, installing new sewage treatment systems, or other means.

(Code 1985, § 11.81(8))

Secs. 50-120—50-136. Reserved.

DIVISION 4. FLOODPLAIN OVERLAY DISTRICT

Sec. 50-137. Floodplain management overlay district.

(a) *Statutory authorization.*

- (1) *Statutory authorization.*** The legislature of the state has, in M.S.A. chs. 103F and 462, delegated the authority to local governmental units to adopt regulations designed to minimize flood losses. M.S.A. ch. 103F further stipulates that communities subject to recurrent flooding must participate and maintain eligibility in the National Flood Insurance Program.
- (2) *Statement of purpose.*** The purpose of this section is to maintain the city's eligibility in the National Flood Insurance Program and to minimize potential losses due to periodic flooding, including loss of life, loss of property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (3) *Warning of disclaimer of liability.*** This section does not imply that areas outside of the floodplain overlay district or land uses permitted within such districts will be free from flooding and flood damages. This section shall not create liability on the part of the city or any officer or employee thereof for any flood damages that result from reliance on this section or any administrative decisions lawfully made thereunder.

(b) *General provisions.*

- (1) *Adoption of flood insurance rate map.*** The flood insurance study and rate maps for the city, dated May 15, 1985, developed by the Federal Emergency Management Agency, is adopted by reference as the official floodplain zoning district map and made a part of this chapter.
- (2) *Lands to which section applies.*** This section shall apply to all lands designated as floodplain within the jurisdiction of the city.
- (3) *Interpretation.*** The boundaries of the floodplain overlay district shall be determined by scaling distances on the official floodplain zoning district map. Where interpretation is needed as to the exact location of the boundaries of the floodplain overlay district, the zoning administrator shall make the necessary interpretation based on elevations on the regional (100-year) flood profile, if available. If 100-year flood elevations are not available, the city shall:
 - a. Require a floodplain evaluation consistent with section 50-115(c) to determine a 100-year flood elevation for the site; or
 - b. Base its decision on available hydraulic/hydrologic or site elevation survey data which demonstrates the likelihood the site is within or outside of the floodplain.
- (4) *Definitions.*** Unless specifically defined in section 1-2, words or phrases used in this section shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this section its most reasonable application.

(c) *Conflict with preexisting zoning regulations and general compliance.*

- (1) *The floodplain district as overlay zoning district.*** The floodplain zoning district shall be considered an overlay zoning district to all existing land use regulations of the city. The uses permitted in sections 50-

115 and 50-116 shall be permitted only if not prohibited by any established, underlying zoning district. The requirements of this section shall apply in addition to other legally established regulations of the city and where this section imposes greater restrictions, the provisions of this section shall apply.

- (2) *Compliance.* No new structure or land shall be used and no structure shall be located, extended, converted, or structurally altered without full compliance with the terms of this section and other applicable regulations which apply to uses within the jurisdiction of this section. Within the floodway and flood fringe, all uses not listed as permitted uses in section 50-115 shall be prohibited. In addition, a caution is provided here that:

- a. New manufactured homes, replacement manufactured homes and certain travel trailers and travel vehicles are subject to the general provisions of this section and specifically 50-115.
- b. Modifications, additions, structural alterations or repair after damage to existing nonconforming structures and nonconforming uses of structures or land are regulated by the general provisions of this section and specifically subsection (i) of this section.
- c. As-built elevations for elevated structures must be certified by ground surveys as stated in section 50-118.

- (d) *Permitted uses, standards, and floodplain elevation criteria.*

- (1) *Permitted uses in the floodplain.* The following uses of land are permitted uses in the floodplain overlay district:

- a. Any use of land which does not involve a structure, an addition to the outside dimensions to an existing structure or an obstruction to flood flows such as fill, excavation, or storage of materials or equipment.
- b. Any use of land involving the construction of new structures, the placement or replacement of manufactured homes, the addition to the outside dimensions of an existing structure or obstructions such as fill or storage of materials or equipment, provided these activities are located in the flood fringe portion of the floodplain. These uses shall be subject to the development standards in subsection (d)(2) of this section, and the floodplain evaluation criteria in subsection (d)(3) of this section, for determining floodway and flood fringe boundaries.
- c. Travel trailers and travel vehicles as regulated by this subsection (d)(1).

- (2) *Standards for floodplain permitted uses.*

- a. Fill shall be properly compacted and the slopes shall be properly protected by the use of rip rap, vegetative cover or other acceptable method. The Federal Emergency Management Agency (FEMA) has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
- b. Grading and filling requirements. Any grading or filling done within a floodplain area shall require a grading and filling permit pursuant to sections 50-426 and 50-572 prior to the commencement of such activities, and in addition, shall be subject to the following requirements, as applicable:
 - 1. All grading and filling permits shall be subject to the following requirements:
 - (i) The smallest amount of bare ground is exposed for as short a time as feasible.
 - (ii) Temporary ground cover, such as mulch, is used and permanent ground cover, such as sod, is established.

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- (iii) Methods to prevent erosion and trap sediment are employed.
 - (iv) Fill is stabilized to accepted engineering standards.
 - 2. Filling for the purpose of meeting the structure elevation requirements of the floodplains of Lake Pulaski and Buffalo Lake shall be subject to the following additional requirements:
 - (i) The finished fill elevation shall be no lower than an elevation of 971.0 feet within the floodplain of Lake Pulaski and no lower than an elevation of 921.7 feet within the floodplain of Buffalo Lake and the fill shall extend at such elevation at least 15 feet beyond the limits of any structure erected thereon.
 - (ii) The fill shall be compacted and the slopes of the fill protected by riprap or vegetative covering.
 - (iii) The applicant for the grading and filling permit shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with this section. The finished elevation shall be listed on the certification and shall be in sea level (NGVD - 1929) datum to the nearest tenth of a foot.
 - 3. Filling within the floodplain (Zone "A") of the unnamed tributary to Buffalo Lake shall be subject to the following additional requirements:
 - (i) The finished fill elevation shall be no lower than an elevation of one foot above the elevation of the regional (100-year) flood if a structure is to be placed on top of the fill.
 - (ii) The fill shall be compacted and the slopes of the fill protected by riprap or vegetative covering.
 - (iii) The finished fill elevation shall be certified and listed by a registered professional engineer, registered architect or registered surveyor.
 - (iv) The applicant shall be required to obtain all information necessary to determine what effects the proposed fill will have on flood stages and to determine the elevation of the regional flood. No permit shall be issued which results in an increase in the regional flood elevation of more than 0.5 feet.
 - (v) The city engineer shall verify the applicant's information and to determine whether the proposed filling complies with this section and the state floodplain management standards as set forth in Minn. R. ch. 6120.
 - (vi) Fill to be placed for a purpose other than elevation of a structure or to remove lands from the floodplain shall be shown to have a beneficial purpose and to be the minimum amount necessary for the intended purpose.
 - c. Public utility, railroad, road, and bridge requirements in floodplains. All public utilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain shall be floodproofed in accordance with the state building code or elevated above the elevation of the regional flood. Railroad tracks, roads and bridges to be located in the floodplain which involve the deposit of fill, shall require a grading and filling permit and be subject to the requirements of subsection (d)(2)b of this section. Such facilities shall be constructed above the regional flood elevation where failure or interruption of such services would result in danger to public health or safety.
 - d. Storage of materials and equipment.

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1. The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited.
 2. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning or if placed on fill to the regulatory flood protection elevation.
- e. No use shall be permitted which will adversely affect the capacity of the channels or floodways of any tributary to the main stream, or of any drainage ditch, or any other drainage facility or system.
 - f. All structures, including accessory structures, additions to existing structures and manufactured homes, shall be constructed on fill so that the lowest floor, including basements, crawl spaces or cellars, is at or above the regulatory flood protection elevation (RFPE) except as specified below:
 1. Within the floodplain of Lake Pulaski (86-53), the RFPE shall be elevation 971.0 feet (NGVD - 1929 datum).
 2. Within the floodplain of Buffalo Lake (86-90), the RFPE shall be elevation 921.7 feet (NGVD - 1929 datum).
 3. Within the floodplain of the unnamed tributary of Buffalo Lake, the RFPE shall be an elevation that is one foot above the 100-year flood elevation, as determined in accordance with subsection (d)(2)b.3 of this section.
 - g. All uses. Uses that do not have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation to lands outside of the floodplain shall not be permitted unless granted a variance by the board of adjustment and appeals. In granting a variance, the board shall specify limitations on the period of use or occupancy of the use and only after determining that adequate flood warning time and local emergency response and recovery procedures exist.
 - h. Commercial and manufacturing uses. Accessory land uses, such as yards, railroad tracks, and parking lots may be at elevations lower than the regulatory flood protection elevation. However, a permit for such facilities to be used by the employees or the general public shall not be granted in the absence of a flood warning system that provides adequate time for evacuation if the area would be inundated to a depth greater than two feet or be subject to flood velocities greater than four feet per second upon occurrence of the regional flood.
 - i. On-site sewage treatment and water supply systems. Where public utilities are not provided:
 1. On-site water supply systems must be designed to minimize or eliminate infiltration of floodwaters into the systems; and
 2. New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the state's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this section.
 - j. All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.

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- (3) *Floodplain evaluation.*
- a. Upon receipt of an application for a permit, manufactured home park development, or subdivision approval within the floodplain overlay district, the zoning administrator shall require the applicant to furnish sufficient site development plans and a hydrologic/hydraulic analysis by a qualified engineer or hydrologist specifying the nature of the development and whether the proposed use is located in the floodway or flood fringe and the regulatory flood protection elevation for the site. Procedures consistent with Minn. R. 6120.5600 (technical standards and requirements for floodplain evaluation) and Minn. R. 6120.5700 (minimum floodplain management standards for local ordinances) shall be followed during the technical evaluation and review of the development proposal.
 - b. The zoning administrator shall submit one copy of all information required, by subsection (d)(3)a of this section, to the respective department of natural resources' area hydrologist for review and comment at least 20 days prior to the granting of a permit or manufactured home park development/subdivision approval by the city. The zoning administrator shall notify the respective department of natural resources' area hydrologist within ten days after a permit or manufactured home park development/subdivision approval is granted.
- (e) *Utilities, railroads, roads, and bridges in the floodplain overlay district.* All utilities and transportation facilities, including railroad tracks, roads and bridges, shall be constructed in accordance with state floodplain management standards contained in Minn. R. 6120.5000—6120.6200.
- (f) *Subdivisions.*
- (1) No land shall be subdivided and no manufactured home park shall be developed or expanded when the site is determined to be unsuitable by the city for reason of flooding or inadequate drainage, water supply or sewage treatment facilities. The planning commission shall review the subdivision/development proposal to ensure that each lot or parcel contains sufficient area outside of the floodway for fill placement for elevating structures, sewage systems and related activities.
 - (2) In the floodplain overlay district, applicants for subdivision approval or development of a manufactured home park or manufactured home park expansion shall provide the information required in subsection (d)(2)a of this section. The city shall evaluate the proposed subdivision or mobile home park development in accordance with the standards established in subsection (c) of this section.
 - (3) For all subdivisions in the floodplain, the floodway and flood fringe boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents.
 - (4) Removal of special flood hazard area designation. FEMA has established criteria for removing the special flood hazard area designation for certain structures properly elevated on fill above the 100-year flood elevation. FEMA's requirements incorporate specific fill compaction and side slope protection standards for multi-structure or multi-lot developments. These standards should be investigated prior to the initiation of site preparation if a change of special flood hazard area designation will be requested.
- (g) *Administration.*
- (1) *Permit required.* A permit issued by the zoning administrator shall be secured prior to the construction, addition, or alteration of any building or structure; prior to the use or change of use of a building, structure, or land; prior to the change or extension of a nonconforming use; and prior to excavation or the placement of an obstruction within the floodplain.

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- (2) *State and federal permits.* Prior to granting a permit or processing an application for a variance, the zoning administrator shall determine that the applicant has obtained all necessary state and federal permits.
 - (3) *Certification of lowest floor elevations.* The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this section. The zoning administrator shall maintain a record of the elevation of the lowest floor (including basement) for all new structures and alterations or additions to existing structures in the floodplain overlay district.
- (h) *Variances.*
- (1) A variance means a modification of a specific permitted development standard required in an official control included in this section to allow an alternative development standard not stated as acceptable in the official control, but only as applied to a particular property for the purpose of alleviating a practical difficulty or unique circumstance, as defined in article XIII, division 4 of this chapter.
 - (2) The board may authorize, upon appeal in specific cases, such relief or variance from the terms of this section as will not be contrary to the public interest and only for those circumstances such as hardship, practical difficulties or circumstances unique to the property under consideration, as provided for in article XIII, division 4 of this chapter. In the granting of such variance, the board of adjustment and appeals shall clearly identify in writing the specific conditions that existed consistent with the criteria specified in the respective enabling legislation which justified the granting of the variance.
 - (3) Variances from the provisions of this section may be authorized where the board of adjustment and appeals has determined the variance will not be contrary to the public interest and the spirit and intent of this section. No variance shall allow in any district a use prohibited in that district or permit a lower degree of flood protection than the regulatory flood protection elevation. Variances may be used to modify permissible methods of flood protection.
 - (4) The board shall submit by mail to the commissioner of natural resources a copy of the application for proposed variance sufficiently in advance so that the commissioner will receive at least ten days' notice of the hearing. A copy of all decisions granting a variance shall be forwarded by mail to the commissioner of natural resources within ten days of such action.
 - (5) Appeals. Appeals from any decision of the board may be made, and as specified in section 50-633.
 - (6) Flood insurance notice and recordkeeping. The zoning administrator shall notify the applicant for a variance that:
 - a. The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and
 - b. Such construction below the 100-year or regional flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions. The city shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biannual report submitted to the administrator of the National Flood Insurance Program.
- (i) *Nonconformities.* A structure or the use of a structure or premises which was lawful before the effective date of the ordinance from which this section is derived, but which is not in conformity with the provisions of this section may be continued subject to the following conditions:
- (1) No such use shall be expanded, changed, enlarged, or altered in a way which increased its nonconformity.

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- (2) An alteration within the inside dimensions of a nonconforming use or structure is permissible provided it will not result in increasing the flood damage potential of that use or structure.
- (3) The cost of all structural alterations or additions both inside and outside of a structure to any nonconforming structure over the life of the structure shall not exceed 50 percent of the market value of the structure unless the conditions of this section are satisfied. The cost of all structural alterations and additions constructed since the adoption of the city's initial floodplain controls must be calculated into today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the current cost of all previous and proposed alterations and additions exceeds 50 percent of the current market value of the structure, then the structure must meet the standards of section 50-115 for new structures.
- (4) If any nonconforming use of a structure or land or nonconforming structure is destroyed by any means, including floods, to an extent of 50 percent or more of its market value at the time of destruction, it shall not be reconstructed except in conformance with the provisions of this section. The city may issue a permit for reconstruction if the use is located outside the floodway and, upon reconstruction, is adequately elevated on fill in conformity with the provisions of this section.
- (j) *Unlawful acts.* It is unlawful for any person to violate the provisions of this section or fail to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances).
- (1) In responding to a suspected Code violation, the zoning administrator may utilize the full array of enforcement actions available to him, including, but not limited to, prosecution and fines, injunctions, after-the-fact permits, orders for corrective measures or a request to the National Flood Insurance Program for denial of flood insurance availability to the guilty party. The city must act in good faith to enforce these official controls and to correct the Code violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.
- (2) When a violation is either discovered by or brought to the attention of the zoning administrator, the zoning administrator shall immediately investigate the situation and document the nature and extent of the violation of the official control. As soon as is reasonably possible, this information will be submitted to the appropriate department of natural resources and FEMA regional office along with the city's plan of action to correct the violation to the degree possible.
- (3) The zoning administrator shall notify the suspected party of the requirements of this section and all other official controls and the nature and extent of the suspected violation of these controls. If the structure or use is under construction or development, the zoning administrator may order the construction or development immediately halted until a proper permit or approval is granted by the city. If the construction or development is already completed, then the zoning administrator may either:
- Issue an order identifying the corrective actions that must be made within a specified time period to bring the use or structure into compliance with the official controls; or
 - Notify the responsible party to apply for an after-the-fact permit/development approval within a specified period of time not to exceed 30 days.
- (4) If the responsible party does not appropriately respond to the zoning administrator within the specified period of time, each additional day that lapses shall constitute an additional violation of this section and shall be prosecuted accordingly. The zoning administrator shall also upon the lapse of the specified response period notify the landowner to restore the land to the condition which existed prior to the violation of this section.
- (k) *Amendments.* All amendments to this section, including revisions to the official floodplain zoning district map, shall be submitted to and approved by the commissioner of natural resources prior to adoption. The

floodplain designation on the official floodplain zoning district map shall not be removed unless the area is filled to an elevation at or above the regulatory flood protection elevation and is contiguous to lands outside of the floodplain. Changes in the official zoning map must meet the FEMA's technical conditions and criteria and must receive prior FEMA approval before adoption. The commissioner of natural resources must be given ten days written notice of all hearings to coincide an amendment to this section and the notice shall include a draft of the amendment or technical study under consideration.

- (l) *Travel trailers and travel vehicles.* Travel trailers and travel vehicles that do not meet the exemption criteria specified in subsection (l)(1) of this section shall be subject to the provisions of this section and as specifically spelled out in subsection (l)(3) and (4) of this section.
- (1) Exemption. Travel trailers and travel vehicles are exempt from the provisions of this section if they are placed in any of the areas listed in subsection (l)(2) of this section, and further they meet the following criteria:
- a. Have current licenses required for highway use.
 - b. Are highway ready, meaning on wheels or the internal jacking system are attached to the site only by quick disconnect type utilities commonly used in campgrounds and trailer parks and the travel trailer/travel vehicle has not permanent structural type additions.
 - c. The travel trailer or travel vehicle and associated use must be permissible in any preexisting, underlying zoning use district.
- (2) Areas exempted for placement of travel/recreational vehicles.
- a. Individual lots or parcels of record.
 - b. Existing commercial recreational vehicle parks or campgrounds.
 - c. Existing condominium type associations.
- (3) Travel trailers and travel vehicles exempted in subsection (l)(1) of this section lose this exemption when development occurs on the parcel exceeding \$500.00 for a structural addition to the travel trailer/travel vehicle or an accessory structure such as a garage or storage building. The travel trailer/travel vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation requirements and the use of land restrictions specified in subsection (d) of this section.
- (4) New commercial travel trailer or travel vehicle parks or campgrounds and new residential type subdivisions and condominium associations and the expansion of any existing similar use exceeding five units or dwelling sites shall be subject to the following:
- a. Any new or replacement travel trailer or travel vehicle will be allowed in the floodway or flood fringe districts provided the trailer or vehicle and its contents are placed on fill above the regulatory flood protection elevation determined in accordance with the provisions of subsection (d)(3) of this section and proper elevated road access to the site exists in accordance with subsection (d) of this section. No fill placed in the floodway to meet the requirements of this section shall increase flood stages of the 100-year or regional flood.
 - b. All new or replacement travel trailers or travel vehicles not meeting the criteria of subsection (1)(1) of this section may, as an alternative, be allowed if in accordance with the following provisions. The applicant must submit an emergency plan for the safe evacuation of all vehicles and people during the 100-year flood. The plan shall be prepared by a registered engineer or other qualified individual and shall demonstrate that adequate time and personnel exist to carry out the evacuation. All attendant sewage and water facilities for new or replacement travel

trailers or other recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding in accordance with subsection (d)(2)h of this section.

(Code 1985, § 11.82)

Secs. 50-138—50-157. Reserved.

ARTICLE III. PLANNED UNIT DEVELOPMENTS

Sec. 50-158. Purpose.

This article is established to provide comprehensive procedures and standards designed to allow greater flexibility in the development of neighborhoods or areas by incorporating a mixture of densities/intensities or use types when applied to a PUD district. The PUD process, by allowing variation from the strict provisions of this chapter related to setbacks, height, lot area, width and depth, yards, etc., is intended to encourage:

- (1) Innovations in development to the end that the growing demands for all styles of economic expansion may be met by greater variety in type, design, and siting of structures and by the conservation and more efficient use of land in such developments.
- (2) Higher standards of site and building design through the use of trained and experienced land planners, architects and landscape architects.
- (3) More convenience in location and design of development and service facilities.
- (4) The preservation and enhancement of desirable site characteristics such as natural topography and geologic features and the prevention of soil erosion.
- (5) A creative use of land and related physical development which allows a phased and orderly transition of land from rural to urban uses.
- (6) An efficient use of land resulting in smaller networks of utilities and streets thereby lower development costs and public investments.
- (7) A development pattern in harmony with the objectives of the comprehensive plan. (PUD is not intended as a means to vary applicable planning and zoning principles).
- (8) A more desirable and creative environment than might be possible through the strict application on zoning and subdivisions regulations of the city.

(Code 1985, § 11.10(1))

Sec. 50-159. General requirements and standards.

- (a) *Ownership.* An application for PUD approval must be filed by the landowner or jointly by all landowners of the property included in a project. The application and all submissions must be directed to the development of the property as a unified whole. In the case of multiple ownership, the approved final plan shall be binding on all owners.
- (b) *Comprehensive plan consistency.* The proposed PUD shall be consistent with the city comprehensive plan.
- (c) *Sanitary sewer plan consistency.* The proposed PUD shall be consistent with the city comprehensive sewer plan.

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- (d) *Common open space.* Common open space at least sufficient to meet the minimum requirements established in the comprehensive plan and such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of the residents of the PUD shall be provided within the area of the PUD development.
- (e) *Operating and maintenance requirements for PUD common open space/facilities.* Whenever common open space or service facilities are provided within the PUD, the PUD plan shall contain provisions to assure the continued operation and maintenance of such open space and service facilities to a pre-determined reasonable standard. Common open space and service facilities within a PUD may be placed under the ownership of one or more of the following, as approved by the council:
- (1) Dedicated to public, where a community-wide use is anticipated and the council agrees to accept the dedication.
 - (2) Landlord control, where only use by tenants is anticipated.
 - (3) Property owners association, provided all of the following conditions are met:
 - a. Prior to the use or occupancy or sale or the execution of contracts for sale of an individual building unit, parcel, tracts, townhouse, apartment or common area, a declaration of covenants, conditions and restrictions in accordance with state law, shall be filed with the city, the filing with the city to be made prior to the filings of the declaration or document or floor plans with the recording officers of the county.
 - b. The declaration of covenants, conditions and restrictions or equivalent document shall specify that deeds, leases or documents of conveyance affecting buildings, units, parcels, tracts, townhouses or apartments shall subject the properties to the terms of the declaration.
 - c. The declaration of covenants, conditions and restrictions shall provide that an owner's association or corporation shall be formed and that all owners shall be members of the association or corporation which shall maintain all properties and common areas in good repair and which shall assess individual property owners proportionate shares of joint or common costs. This declaration shall be subject to the review and approval of the city attorney. The intent of this requirement is to protect the property values of the individual owner through establishing private control.
 - d. The declaration shall additionally, amongst other things, provide that in the event the association or corporation fails to maintain properties in accordance with the applicable rules and regulations of the city or fails to pay taxes or assessments on properties as they become due and in the event the city incurs any expenses in enforcing its rules and regulations, which the expenses are not immediately reimbursed by the association or corporation, then the city shall have the right to assess each property its prorata share of the expenses. Such assessments, together with interest thereon and costs of collection, shall be a lien on each property against which each such assessment is made.
 - e. Membership must be mandatory for each owner and any successive buyer.
 - f. The open space restrictions must be permanent and not for a given period of years.
 - g. The association must be responsible for liability insurance, local taxes, and the maintenance of the open space facilities to be deeded to it.
 - h. Property owners must pay their prorata share of the cost of the association by means of an assessment to be levied by the association which meets the requirements for becoming a lien on the property in accordance with state statutes.
 - i. The association must be able to adjust the assessment to meet changed needs.

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- j. The bylaws and rules of the association and all covenants and restrictions to be recorded must be approved by the council prior to the approval of the final PUD plan.
- (f) *Staging of public and common open space.* When a PUD provides for common or public open space and is planned as a staged development over a period of time, the total area of common or public open space or land escrow security in any stage of development shall, at a minimum, bear the same relationship to the total open space to be provided in the entire PUD as the stages or units completed or under development bear to the entire PUD.
- (g) *Density.* The maximum allowable density variation in a PUD shall be determined by standards negotiated and agreed upon between the applicant and the city. In all cases the negotiated standards shall be consistent with the development policies as contained in the comprehensive plan. Whenever a PUD is to be developed in stages, no such stage shall, when averaged with all previously completed stages, have a residential density that exceeds 125 percent of the proposed residential density of the entire PUD.
- (h) *Utilities.* In any PUD, all utilities, including telephone, electricity, gas, cable television, and any other similar utility, shall be installed underground.
- (i) *Utility connections.*
- (1) *Water connections.* Where more than one property is served from the same service line, individual unit shutoff valves shall be provided as required by the city engineer.
 - (2) *Sewer connections.* Where more than one unit is served by a sanitary sewer lateral, provision must be made for manholes and any other requirements of the city engineer to allow adequate cleaning and maintenance of the lateral. All maintenance and cleaning shall be the responsibility of the property owners' association or owner.
- (j) *Roadways.* All public streets shall conform to the design standards contained in chapter 40, unless otherwise approved by the council. Private streets, if utilized, shall be no less than 28 feet in width, measured from back of curb.
- (k) *Landscaping.* In any PUD, landscaping shall be provided according to a plan approved by the council, which shall include a detailed planting list with sizes and species indicated as part of the final plan. In assessing the landscaping plan, the council shall consider the natural features of the particular site, the architectural characteristics of the proposed structures and the overall scheme of the PUD plan.
- (l) *Urban/rural servicing requirements.* All development will be carefully phased so as to ensure that all developable land will be accorded a present vested right to develop at such time as services and facilities are available. Lands which have the necessary available municipal facilities and services will be granted approval in accordance with existing provisions of this Code and development techniques. Lands which lack the available public facilities and services may be granted approval for development, provided that all applicable provisions of this chapter, this Code, and state regulations are complied with.
- (m) *Setbacks.*
- (1) The front and side yard restrictions of the periphery of the planned unit development site at a minimum shall be the same as imposed in the respective districts.
 - (2) No building shall be located less than 15 feet from the back of the curblin along those roadways which are part of the internal street pattern.
 - (3) No building within the project shall be nearer to another building than one-half the sum of the building heights of the two buildings.
 - (4) Setbacks from private streets shall be no less than 28 feet from face of garage to edge of pavement.

(Code 1985, § 11.10(2))

Sec. 50-160. Submission requirements.

Five copies of the following exhibits, analyses and plans shall be submitted to the planning commission and council during the PUD process, at the times specified in section 50-161.

(1) *General concept stage.*

a. General information.

1. The landowner's name and address and his interest in the subject property.
2. The applicant's name and address if different from the landowner.
3. The names and addresses of all professional consultants who have contributed to the development of the PUD plan being submitted, including attorney, land planner, engineer and surveyor.
4. Evidence that the applicant has sufficient control over the subject property to effectuate the proposed PUD, including a statement of all legal, beneficial, tenancy and contractual interests held in or affecting the subject property and including an up-to-date certified abstract of title or registered property report, and such other evidence as the city attorney may be required to show the status of title or control of the subject property.

b. Present status.

1. The address and legal description of the subject property.
2. The existing zoning classification and present use of the subject property and all lands within 1,000 feet of the subject property.
3. A map depicting the existing development of the subject property and all land within 1,000 feet thereof and indicating the location of existing streets, property lines, easements, water mains and storm and sanitary sewers, with invert elevations on and within 100 feet of the subject property.

c. A written statement generally describing the proposed PUD and the market which it is intended to serve and its demand showing its relationship to the comprehensive plan and how the proposed PUD is to be designed, arranged and operated in order to permit the development and use of neighboring property in accordance with the applicable regulations of the city.

d. Site conditions. Graphic reproductions of the existing site conditions at a scale of 100 feet.

1. Contours. Minimum two-foot intervals.
2. Location. Type and extent of tree cover.
3. Slope analysis.
4. Location and extent of water bodies, wetlands and streams and floodplains within 300 feet of the subject property.
5. Significant rock outcroppings.
6. Existing drainage patterns.
7. Vistas and significant views.
8. Soil conditions as they affect development.

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- e. Schematic drawing of the proposed development concept, including, but not limited to, the general location of major circulation elements, public and common open space, residential and other land uses.
 - f. A statement of the estimated total number of dwelling units proposed for the PUD and a tabulation of the proposed approximate allocations of land use expressed in acres and as a percent of the total project area, which shall include at least the following:
 - 1. Area devoted to residential uses.
 - 2. Area devoted to residential use by building type.
 - 3. Area devoted to common open space.
 - 4. Area devoted to public open space.
 - 5. Approximate area devoted to streets.
 - 6. Approximate area devoted to, and number of, off-street parking and loading spaces and related access.
 - 7. Approximate area and floor area devoted to commercial uses.
 - 8. Approximate area and floor area devoted to industrial or office use.
 - g. When the PUD is to be constructed in stages during a period of time extending beyond a single construction season, a schedule for the development of such stages or units shall be submitted stating the approximate beginning and completion date for each such stage or unit and the proportion of the total PUD public or common open space and dwelling units to be provided or constructed during each such stage and the overall chronology of development to be followed from stage to stage.
 - h. When the proposed PUD includes provisions for public or common open space or service facilities, a statement describing the provision that is to be made for the care and maintenance of such open space or service facilities.
 - i. General intents of any restrictive covenants that are to be recorded with respect to property included in the proposed PUD.
 - j. Schematic utilities plans indicating placement of water, sanitary and storm sewers.
 - k. The planning commission may excuse an applicant from submitting any specific item of information or document required in this stage, which it finds to be unnecessary to the consideration of the specific proposal for PUD approval.
 - l. The planning commission may require the submission of any additional information or documentation which it may find necessary or appropriate to full consideration of the proposed PUD or any aspect or stage thereof.
- (2) *Development stage.* Development stage submissions should depict and outline the proposed implementations of the general concept stage for the PUD. Information from the general concept stage may be included for background and to provide a basis for the submitted plan. The development stage submissions shall include, but not be limited to:
- a. Zoning classification required for development stage submission and any other public decisions necessary for implementation of the proposed plan.
 - b. Five sets of preliminary plans, drawn to a scale of not less than one inch equals 100 feet or scale requested by the administrator containing at least the following information:

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1. Proposed name of the development (which shall not duplicate nor be similar in pronunciation to the name of any plat theretofore recorded in the county where the subject property is situated).
 2. Property boundary lines and dimensions of the property and any significant topographical or physical features of the property.
 3. The location, size, use and arrangement, including height in stories and feet and total square feet of ground area coverage and floor area, of proposed buildings, and existing buildings which will remain, if any.
 4. Location, dimensions of all driveways, entrances, curb cuts, parking stalls, loading spaces and access aisles, and all other circulation elements, including bike and pedestrian; and the total site coverage of all circulation elements.
 5. Location, designation and total area of all common open space.
 6. Location, designation and total area proposed to be conveyed or dedicated for public open space, including parks, playgrounds, school sites and recreational facilities.
 7. Proposed lots and blocks, if any, and numbering system.
 8. The location, use and size of structures and other land uses on adjacent properties.
 9. Detailed sketches and provisions of proposed landscaping.
 10. General grading and drainage plans for the developed PUD.
 11. Any other information that may have been required by the planning commission or council in conjunction with the approval of the general concept plan.
- c. An accurate legal description of the entire area within the PUD for which final development plan approval is sought, together with a certificate of survey prepared by a registered land surveyor.
 - d. A tabulation indicating the number of residential dwelling units and expected population.
 - e. A tabulation indicating the gross square footage, if any, of commercial and industrial floor space by type of activity (e.g., drug store, dry cleaning, supermarket).
 - f. Preliminary architectural typical plans indicating use, floor plan, elevations and exterior wall finishes of proposed building, including mobile homes.
 - g. A detailed site plan, suitable for recording, showing the physical layout, design and purpose of all streets, easements, rights-of-way, utility lines and facilities, lots, blocks, public and common open space, general landscaping plan, structure, including mobile homes and uses.
 - h. Preliminary grading and site alteration plan illustrating changes to existing topography and natural site vegetation. The plan should clearly reflect the site treatment and its conformance with the approved concept plan.
 - i. A preliminary plat prepared in accordance with the chapter 40.
 - j. A soil erosion control plan acceptable to watershed districts, department of natural resources, soil conservation service, or any other agency with review authority clearly illustrating erosion control measures to be used during construction and as permanent measures.
 - k. A statement summarizing all changes which have been made in any document, plan data or information previously submitted, together with revised copies of any such document, plan or data.

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- l. Such other and further information as the planning commission, administrator or council shall find necessary to a full consideration of the entire proposed PUD or any stage thereof.
 - m. The planning commission may excuse an applicant from submitting any specific item of information or document required in this section it finds to be unnecessary to the consideration of the specific proposal for PUD approval.
- (3) *Final plan stage.* After approval of a general concept plan for the PUD and approval of a development stage plan for a section of the proposed PUD the applicant will submit the following material for review by the city staff prior to issuance of a building permit:
- a. Proof of recording any easements and restrictive covenants prior to the sale of any land or dwelling unit within the PUD and of the establishment and activation of any entity that is to be responsible for the management and maintenance of any public or common open space or service facility.
 - b. All certificates, seals and signatures required for the dedication of land and recordation of documents.
 - c. Final architectural working drawings of all structures.
 - d. A final plat and final engineering plans and specifications for streets, utilities and other public improvements, together with a community/developer agreement for the installation of such improvements and financial guarantees for the completion of such improvements.
 - e. Any other plan, agreements, or specifications necessary for the city staff to review the proposed construction. All work must be in conformance with the state uniform building code.

(Code 1985, § 11.10(3))

Sec. 50-161. Procedure for processing a planned unit development.

- (a) *Application conference.* Upon filing of an application for PUD, the applicant of the proposed PUD is encouraged to arrange for and attend a conference with the zoning administrator. The primary purpose of the conference shall be to provide the applicant with an opportunity to gather information and obtain guidance as to the general suitability of his proposal for the area for which it is proposed and its conformity to the provisions of this chapter before incurring substantial expense in the preparation of plans, surveys and other data.
- (b) *General concept plan.*
 - (1) *Purpose.* The general concept plan provides an opportunity for the applicant to submit a plan to the city showing his basic intent and the general nature of the entire development without incurring substantial cost. The following elements of the proposed general concept plan represents the immediately significant elements for city review and comment:
 - a. Overall maximum PUD density range.
 - b. General location of major streets and pedestrian ways.
 - c. General location and extent of public and common open space.
 - d. General location of residential and nonresidential land uses with approximate type and intensities of development.
 - e. Staging and time schedule of development.
 - f. Other special criteria for development.

(2) *Schedule.*

- a. Developer meets with the zoning administrator to discuss the proposed developments.
- b. The applicant shall file a request for a concept review, together with all supporting data and filing fee as established by ordinance.
- c. Within 30 days after verification by the staff that the required plan and supporting data is adequate, the planning commission shall hold a public review of the concept.
- d. The zoning administrator, upon verification of the application, shall instruct the city clerk to set the concept review for the next regular meeting of the planning commission. The planning commission shall conduct the review and report its findings and make comments on the proposal to the council. The planning commission's comments shall identify potential issues and elements of the proposal in relation to policies of the comprehensive plan for development of the area in question.
- e. The zoning administrator shall instruct the appropriate staff persons to prepare technical reports where appropriate and provide general assistance in preparing a recommendation on the action to the council. Additionally, when appropriate as determined by the zoning administrator, the request shall be provided to the park and recreation committee for their review and comment.
- f. The planning commission and city staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, the information to be declared necessary to establish performance conditions in relation to all pertinent sections of this chapter.
- g. The applicant or a representative thereof shall appear before the planning commission in order to answer questions concerning the proposed development.
- h. Within 60 days of the planning commission's concept review meeting, or such further time as may be agreed to by the applicant, the planning commission shall itself review the reports and plans and submit its written report and comments to the council and applicant. Such report shall contain the findings of the planning commission with respect to the general concept plan.
- i. Within 30 days of receipt of the report and comments from the planning commission, the council shall review the concept plan and provide comment to the proposer as to issues and elements to be addressed if the proposer chooses to proceed to development stage PUD.

(3) *Optional submission of development stage plan.* In cases of single stage PUDs or where the applicant wishes to begin the first stage of a multiple stage PUD immediately, the developer may initially submit development stage plans for the proposed PUD. In such case, the planning commission and council shall consider such plans, grant or deny development stage plan approval in accordance with the provisions of this subsection.

(4) *Effect of concept review.* The comments provided by the planning commission and council as to the proposed concept plan are intended to assist the developer in preparing subsequent plans but shall not imply any approval or assurance of action on subsequent development stage or final stage PUD plans.

(c) *Development stage.*

- (1) *Purpose.* The purpose of the development stage plan is to provide a specific and particular plan upon which the planning commission will base its recommendation to the council and with which substantial compliance is necessary for the preparation of the final plan.
- (2) *Submission of development stage.* The applicant shall file with the zoning administrator a development stage plan consisting of the information and submissions required by subsection (b)(3) of this section

for the entire PUD or for one or more stages thereof in accordance with a staging plan approved as part of the concept plan. The development stage plan shall refine, implement and be in substantial conformity with the comments provided as a part of the concept plan review.

- (3) *Review and action by city staff and planning commission.* Immediately upon receipt of a completed development stage plan, the administrator shall refer such plan to the following city staff or official bodies for the indicated action:
- a. The city attorney for legal review of all documents.
 - b. The city engineer for review of all engineering data and the city/developer agreement.
 - c. The building official for review of all building plans.
 - d. The zoning administrator for review of all plans for compliance with the intent, purpose and requirements of this chapter and conformity with the general concept plan and comprehensive plan.
 - e. The planning commission for review and recommendation to the council.
 - f. When appropriate, as determined by the zoning administrator the request shall be referred to the park and recreation committee for review and recommendations.
 - g. When appropriate, as determined by the zoning administrator to other special review agencies such as the watershed districts, soil conservation services, highway departments or other affected agencies.
 - h. All staff designated in subsection (c)(3)a through d of this section shall submit their reports in writing to the planning commission and applicant.
- (4) *Schedule.*
- a. Developer meets with the zoning administrator and city staff to discuss specific development plans.
 - b. The applicant shall file the development stage application together with all supporting data and filing fee as established by ordinance.
 - c. A technical staff report shall be prepared on the proposed development and distributed to the planning commission and the applicant prior to the meeting.
 - d. The applicant or a representative thereof shall appear before the planning commission in order to answer questions concerning the proposed development.
 - e. Planning commission will make a recommendation to the council on the development stage plan.
 - f. Council reviews all recommendations and approves/denies the plan.
 - g. The zoning administrator shall instruct the city attorney to draw up a PUD agreement which stipulates the specific terms and conditions approved by the council and accepted by the applicant. This agreement shall be signed by the mayor, city administrator and the applicant within 30 days of council approval of the development stage plan. Where the development stage plan is to be resubmitted or denied approval, the council action shall be by written report setting forth the reasons for its action.
- (5) *Limitation on development stage plan approval.* Unless a final plan covering the area designated in the development stage plan as the first stage of the PUD has been filed within six months from the date council grants development stage plan approval, or in any case where the applicant fails to file final plans and to proceed with development in accordance with the provisions of this chapter or an approved development stage plan, the approval shall expire. Upon application by the applicant, the

council at its discretion may extend for not more than six months, the filing deadline for any final plan when, for good cause shown, such extension is necessary. In any case where development plan approval expires, the council shall forthwith adopt a resolution repealing the development stage plan approval for that portion of the PUD that has received final plan approval and re-establishing the zoning and other this code provisions that would otherwise be applicable.

- (6) *Site improvements.* At any time following the approval of a development stage plan by the council, the applicant may, pursuant to the applicable Code provisions, apply for, and the city engineer may issue, grading permits for the area within the PUD for which development stage plan approval has been given.
- (d) *Final plan.*
- (1) *Purpose.* The final plan is to serve as a complete, thorough and permanent public record of the PUD and the manner in which it is to be developed. It shall incorporate all prior approved plans and all approved modifications thereof resulting from the PUD process. It shall serve in conjunction with other Code provisions as the land use regulation applicable to the PUD. The final plan is intended only to add detail to, and to put in final form, the information contained in the development stage plan and shall conform to the development stage plan in all respects.
- (2) *Schedule.*
- a. Upon approval of the development stage plan, and within the time established in subsection (c)(5) of this section, the applicant shall file with the zoning administrator a final plan consisting of the information and submissions required in section 50-160(3) for the entire PUD or for one or more stages. This plan will be reviewed and approved or denied by city staff, unless otherwise specified by the council.
- b. Within 30 days of its approval, the applicant shall cause the final plan, or such portions thereof as are appropriate, to be recorded with the county recorder or registrar of titles. The applicant shall provide the city with a signed copy verifying county recording within 40 days of the date of approval.
- (3) *Building and other permits.* Except as otherwise expressly provided herein, upon receiving notice from the zoning administrator that the approved final plan has been recorded and upon application of the applicant pursuant to the applicable Code provisions, all appropriate officials of the city may issue building and other permits to the applicant for development, construction and other work in the area encompassed by the approved final plan; provided, however, that no such permit shall be issued unless the appropriate official is first satisfied that the requirements of all codes and Code provisions in which are applicable to the permit sought, have been satisfied.
- (4) *Limitation on final plan approval.* Within one year after the approval of a final plan for PUD, or such shorter time as may be established by the approved development schedule, construction shall commence in accordance with such approved plan. Failure to commence construction within such period shall, unless an extension shall have been granted as provided in this subsection, automatically render void the PUD permit and all approvals of the PUD plan and the area encompassed within the PUD shall thereafter be subject to those provisions of this chapter, and other Code provisions, applicable in the district in which it is located. In such case, the council shall forthwith adopt an ordinance repealing the PUD permit and all PUD approvals and re-establishing the zoning and other Code provisions that would otherwise be applicable. The time limit established by this subsection may, at the discretion of the council, be extended for not more than one year.
- (5) *Inspections during development.*
- a. Compliance with overall plan. Following final plan approval of a PUD, or a stage thereof, the zoning administrator shall, at least annually until the completion of the development, review all

permits issued and construction undertaken and compare actual development with the approved development schedule.

- b. If the zoning administrator finds that development is not proceeding in accordance with the approved schedule, or that it fails in any other respect to comply with the PUD plans as finally approved, he shall immediately notify the council. Within 30 days of such notice, the council shall either:
1. By ordinance revoke the PUD permit, and the land shall thereafter be governed by the regulations applicable in the district in which it is located;
 2. Take such steps as it shall deem necessary to compel compliance with the final plans as approved; or
 3. Require the landowner or applicant to seek an amendment of the final plan.

(Code 1985, § 11.10(4))

Secs. 50-162—50-190. Reserved.

ARTICLE IV. YARD, LOT AND AREA REQUIREMENTS

Sec. 50-191. Purpose.

This article identifies yard, lot area, building size, building type, and height requirements in each zoning district.

(Code 1985, § 11.18(1))

Sec. 50-192. Usable open space.

Each multiple family dwelling site shall contain at least 500 square feet of usable space, as defined in section 50-3 for each dwelling unit contained thereof.

(Code 1985, § 11.18(2))

Sec. 50-193. Height.

The building height requirements in subsections (1) through (3) of this section shall apply to residential, business and industrial districts, as shown in the following table:

| <i>Districts</i> | <i>Height Maximum</i> | <i>Exceptions</i> |
|--|---|--|
| A-1, R-R, R-A, R-1, R-2, R-3, R-4, R-MH, B-2 | 25 feet or 2.5 stories, whichever is less | School buildings reach up to 60 feet |
| R-B, B-3, B-4, B-W | 35 feet or three stories, whichever is less | None except via CUP per ordinance allowances |
| R-5, R-6, R-7, B-5 | 45 feet or stories, whichever is less | Height may be extended by conditional |

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| | | use permit or via planned unit development |
| I-1, I-2 | 45 feet or four stories, whichever is less | None except via CUP per ordinance allowances |

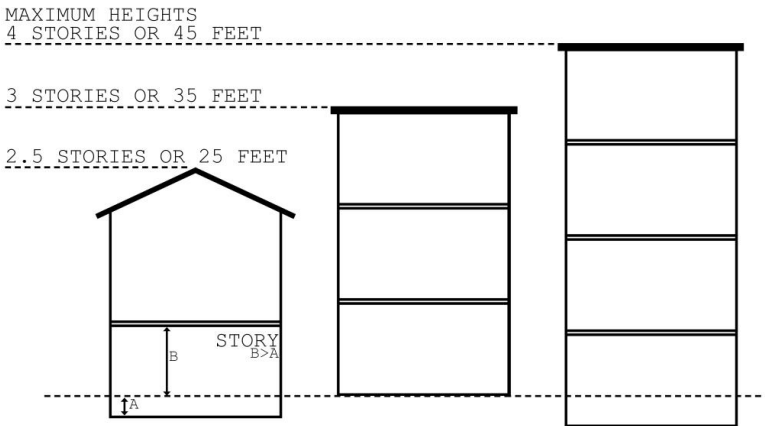


Figure 10. Maximum Heights

- (1) Except for farm buildings and school buildings, no structure in the A-1, R-R, R-A, R-1, R-2, R-3, R-4, R-MH, and B-2 districts shall exceed 2½ stories or 25 feet, whichever is least. In these districts, school buildings may not exceed 60 feet in height.
- (2) No structure shall exceed three stories or 35 feet, whichever is least, in the R-B, B-3, B-4, or B-W districts.
- (3) No structure shall exceed four stories or 45 feet in the R-5, R-6, R-7, B-5, I-1, or I-2 districts.
- (4) Building heights in excess of these above noted standards may be permitted through a conditional use permit, provided that:
 - a. The site is capable of accommodating the increased intensity of use.
 - b. The increased intensity of use does not cause an increase in traffic volumes beyond the capacity of the surrounding streets.
 - c. Public utilities and services are adequate.
 - d. For each additional story over three stories or for each additional ten feet above 40 feet, front and side yard setback requirements shall be increased by five percent.
 - e. The increased height is not in conflict with airport zoning regulations.
 - f. The provisions of section 50-699 are considered and satisfactorily met.
- (5) The building height limits established in this section for districts shall not apply to the following:
 - a. Belfries.
 - b. Chimneys or flues.

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- c. Church spires.
 - d. Cooling towers.
 - e. Cupolas and domes which do not contain usable space.
 - f. Elevator penthouses.
 - g. Flag poles.
 - h. Monuments.
 - i. Parapet walls extending not more than three feet above the limiting height of the building.
 - j. Poles, towers and other structures for essential services.
 - k. Necessary mechanical and electrical appurtenances.
 - l. Farming buildings.
 - m. Wind energy conversion system towers as regulated section 50-486.
- (6) No excluded equipment or structural element listed in subsection (5) of this section extending beyond the limited height of a building may occupy more than 25 percent of the area of any roof on which it is mounted, nor exceed ten feet in height above the principal structure on the property unless otherwise allowed by this chapter.

(Code 1985, § 11.18(3); Ord. No. 2021-5 , § 11.18, 9-20-2021)

Sec. 50-194. Building type and construction.

- (a) No galvanized or unfinished steel, galvalum or unfinished aluminum buildings (walls or roofs), except those specifically intended to have a corrosive designed finish such as corten steel shall be permitted in any zoning district, except in association with farming activities.
- (b) Buildings in all zoning districts shall maintain a high standard of architectural and aesthetic compatibility with surrounding properties to ensure that they will not adversely impact the property values of the abutting properties or adversely impact the public health, safety, and general welfare.
- (c) Exterior building finishes shall consist of materials comparable in grade and quality to the following:
 - (1) Brick.
 - (2) Natural stone.
 - (3) Decorative concrete block.
 - (4) Cast in place concrete or precast concrete panels.
 - (5) Wood, provided the surfaces are finished for exterior use and wood of proven exterior durability is used, such as cedar, redwood, cypress.
 - (6) Curtain wall panels of steel, fiberglass and aluminum (nonstructural, non-load bearing), provided such panels are factory fabricated and finished with a durable non-fade surface and their fasteners are of a corrosion resistant design.
 - (7) Glass curtain wall panels.
 - (8) Stucco or similar finish, such as exterior insulated finish system (EIFS).
- (d) "B" business districts. In all the "B" business zoning districts of the city, any exposed metal or fiberglass finish on all buildings shall be limited to no more than 25 percent of any individual wall if it is coordinated into the

architectural design. Masonry (brick, stone, or decorative concrete), glass, stucco, or composite stucco material such as "EFIS," shall comprise no less than 75 percent of each wall of the building. Any roof that that is less than 4:12 slope must include a parapet wall screening the slope from view of any neighboring property or public right-of-way. A developer may request a review of alternative materials or design by seeking comment from the planning commission at a public hearing, and approval by the city council, following the process for a conditional use as regulated by article XIII, division 3 of this chapter. Such alternative shall demonstrate distinctive architectural design and be consistent with, or exceed, the quality of other conforming buildings in the area.

(e) "I" industrial districts.

- (1) In the "I" districts, all buildings constructed of curtain wall panels of finished steel, aluminum or fiberglass shall be required to be faced with brick, wood, stone, architectural concrete cast in place or pre-cast concrete panels on all wall surfaces. The required wall surface treatment may allow a maximum of 50 percent of the metal or fiberglass wall to remain exposed if it is coordinated into the architectural design.
- (2) The city may grant a deferment to a developer of industrial metal buildings or building additions from the exterior wall design requirements of subsection (e)(1) of this section, when the building or building addition will be constructed in more than one phase.
 - a. The deferment shall be until the second construction phase is completed or five years, whichever is less.
 - b. The developer shall provide the city with an irrevocable letter of credit for an amount 1½ the estimated cost of the required exterior wall treatment. The bank and letter of credit shall be subject to the approval of the city attorney. The letter of credit shall secure compliance with this section.
- (3) The city may grant an exemption to subsection (e)(1) of this section when it is determined that the building character of an area would be more appropriately served by a different standard. Such a determination shall be based upon the following considerations:
 - a. The established character of existing buildings in the immediate area.
 - b. The planning commission reviews the proposal at a public hearing, and the city council considers the item according to the process for conditional uses in article XIII, division 3 of this chapter.

(Code 1985, § 11.18(4))

Sec. 50-195. Yards.

No lot, yard or other open space shall be reduced in area or dimension so as to make such lot, yard or open space less than the minimum required by this article, and if the existing yard or other open space as existing is less than the minimum required, it shall not be further reduced. No required open space provided about any building or structure shall be included as a part of any open space required for another structure.

- (1) The following shall not be considered as encroachments on yard setback requirements:
 - a. Chimneys, flues, leaders, sills, pilasters, lintels, ornamental features, cornices, eaves, gutters, and the like, provided they do not project more than two feet into a yard.
 - b. In front and side yards:
 1. Terraces, steps, uncovered porches or patios, stoops, or similar features provided they do not extend above the height of the ground floor level of the principal structure nor more

than one foot above the natural grade, whichever is less, nor to a distance less than two feet from any lot line.

2. A vestibule for weather protection for an exterior entrance, provided such vestibule extends no more than five feet into the setback area, covers no more than 40 square feet of encroachment, and is not closer than three feet from any lot line. Such vestibule shall not be considered when calculating setback averaging in subsection (2) of this section.
 - c. In rear yards: Recreational and laundry drying equipment, arbors, and trellises, balconies, breezeways, open porches and decks, detached outdoor living rooms such as gazebos, garages, and air conditioning or heating equipment, provided they are at a distance of at least five feet from the rear or side lot line.
 - d. A cantilevered extension may extend from the principal building into the required front, side, or rear yard up to a maximum encroachment of two feet and a maximum exterior area of 20 feet, for the purpose of permitting such features as bay windows or other similar building features. The encroachment shall be cantilevered and shall not have footings or foundation supporting the encroachment within the required setback area.
- (2) Where adjacent structures have front yard setbacks different from those required, the minimum front yard setback shall be the average setback of such adjacent structures. If only one adjacent lot is occupied by a structure, the minimum front yard shall be the average of the required setbacks and the setback of such adjacent structure. In no case shall the setback requirement exceed the minimum established for the respective zoning district. See Figure 11 as follows:

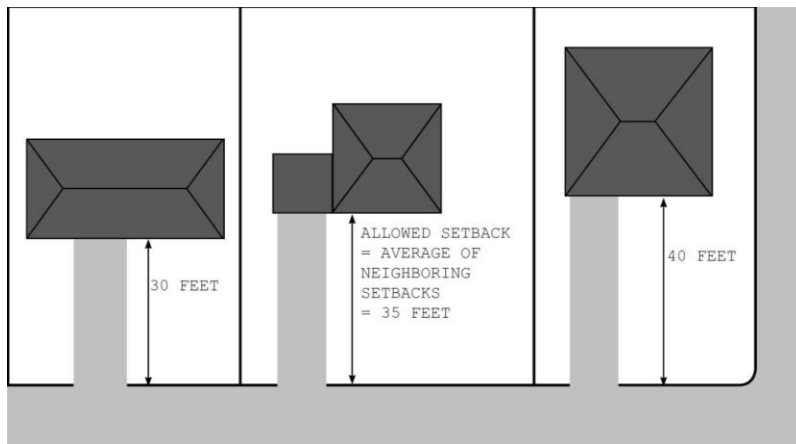


Figure 11. Adjacent Structures

- (3) Wetland buffer zone. Except for fences and recreational equipment, no building, structure, paved surface, or use shall be located within a buffer zone around any wetland. The buffer zone shall be equal to the building setback as required by the zoning district and yard area in which the wetland is located, however, in no case shall the buffer zone be reduced to a distance of less than 20 feet. The buffer zone shall be left in its natural vegetative state where practicable. If disturbed, the buffer zone shall be replanted with natural vegetation, or landscaped with ornamental trees, shrubs, or grass.

(Code 1985, § 11.18(5))

Sec. 50-196. Minimum floor area per dwelling unit.

- (a) *Single-family dwelling units.* Except as otherwise specified in the zoning district provisions, single-family homes as classified in the table below shall have the following minimum floor areas per unit:

| | |
|---------------|-------------------------------|
| Two bedroom | 960 square feet above grade |
| Three bedroom | 1,040 square feet above grade |

- (b) *Multiple dwelling units.* Except for elderly housing, living units classified as multiple dwelling shall have the following minimum floor areas per unit:

| | |
|-----------------------------|--|
| Efficiency units | 500 square feet |
| One bedroom units | 700 square feet |
| Two bedroom units | 800 square feet |
| More than two bedroom units | An additional 80 square feet for each additional bedroom |

- (c) *Elderly (senior citizen) housing.* Living units classified as elderly (senior citizen) housing units shall have the following minimum floor areas per unit:

| | |
|------------------|-----------------|
| Efficiency units | 440 square feet |
| One bedroom | 520 square feet |

- (d) *Double bungalows, quadraminiums and townhouses.* Except as otherwise specified in the zoning district provisions, double bungalows, quadraminiums and townhouses, as classified below, shall have the minimum floor area per one-bedroom unit:

| | |
|-----------------|---|
| Double bungalow | 650 square feet first floor above grade, plus 100 additional square feet for each additional bedroomQuadraminiums and |
| Townhouses | 600 square feet first floor above grade, plus 100 additional square feet for each additional bedroom |

(Code 1985, § 11.18(6))

Sec. 50-197. Efficiency apartments.

Except for elderly (senior citizen) housing, the number of efficiency apartments in a multiple dwelling shall not exceed 25 percent of the total number of apartments. In the case of elderly (senior citizen) housing, efficiency apartments shall not exceed 30 percent of the total number of apartments.

(Code 1985, § 11.18(7))

Sec. 50-198. Minimum floor area; commercial and industrial structures.

Commercial and industrial buildings (principal structure) which are to be less than 1,000 square feet of floor area may only be allowed upon approval of a conditional use permit as provided for in article XIII, division 3 of this chapter.

(Code 1985, § 11.18(8))

Sec. 50-199. Minimum lot area per unit.

The lot area per unit requirement for two-family, townhouses, apartments and planned unit developments shall be calculated on the basis of the total area in the project and as controlled by an individual and joint ownership.

| | |
|----------------------------|--|
| One-family | As specified in zoning district provisions |
| Two-family | 7,500 square feet |
| Townhouse and quadraminium | 5,000 square feet |
| Multiple-family | 2,500 square feet ¹ |
| Elderly housing | 500 square feet |

¹ In the R-5, R-6, and B-5 districts, the minimum lot area per unit may be reduced by conditional use permit, providing all other conditions of the district are met, with maximum density as listed in the individual districts.

(Code 1985, § 11.18(9))

Sec. 50-200. Townhouse, quadraminium, apartments.

- (a) No single townhouse structure shall contain more than eight dwelling units.
- (b) Minimum unit lot frontage for townhouses shall be not less than 28 feet.
- (c) Townhouses, quadraminiums and multiple family units intended for owner occupancy shall be subdivided on an individual unit basis according to the provisions of section 50-169 or under the Uniform Condominium Act, M.S.A. § 515A.1-101 et seq.

(Code 1985, § 11.18(10))

Sec. 50-201. Subdivision of two-family or quadraminium lots.

The subdivision of base lots containing two-family dwellings or quadraminiums to permit individual private ownership of a single dwelling within such a structure is acceptable upon the approval by the council. Approval of a subdivision request is contingent on the following requirements:

- (1) Prior to a two-family dwelling or quadraminium subdivision, the base lot must meet all the requirements of the zoning district.
- (2) The following are minimum unit lot requirements for two-family and quadraminium subdivisions where the city sewer or water systems are available:
 - a. Lot area per dwelling unit:

-
1. Two-family dwelling: 7,500 square feet.
 2. Quadraminium: 5,000 square feet.
 - b. Lot width: 50 feet.
 - c. Setbacks:
 1. Front yard: 30 feet.
 2. Rear yard: 30 feet.
 3. Side yard adjacent to another lot: ten feet. (Side yard setback is not applicable where structure has a shared wall as in the case of two-family dwellings and quadraminiums.)
 4. Side yard adjacent to street: 20 feet.
 - (3) There shall be no more than one principal structure on a base lot in all residential districts. The principal structure on unit lot created in a two-family or quadraminium subdivision will be the portion of the attached dwelling existing or constructed on the platted unit lots.
 - (4) Permitted accessory uses as defined by the zoning districts are acceptable, provided they meet all the zoning requirements.
 - (5) A property maintenance agreement must be arranged by the applicant and submitted to the city attorney for his review and subject to approval. The agreement shall ensure the maintenance and upkeep of the structure and the lots to meet minimum city standards. The agreement is to be filed with the county recorder's office as a deed restriction against the title of each unit lot.
 - (6) Separate public utility service shall be provided to each subdivided unit and shall be subject to the review and approval of the city engineer.
 - (7) The subdivision is to be platted and recorded in conformance with the requirements of chapter 40.
- (Code 1985, § 11.18(11))

Sec. 50-202. Minimum lot area, unsewered lots.

Lot sizes where public sewer is not available shall conform to the minimum requirements set forth in this section.

- (1) The minimum single-family lot size is five acres unless otherwise specified in the zoning district. This minimum lot size shall not apply to smaller separate parcels of record in separate ownership lawfully existing prior to January 1, 1985, provided that it can be demonstrated by means satisfactory to the city that the smaller parcels will not result in groundwater, soil or other contamination which may endanger the public health.
- (2) Apartments and multiple-family dwellings are not allowable uses.
- (3) Subject to other provisions of this chapter, other uses may be permitted by conditional use permit when such use is allowed in the applicable zoning district. The minimum lot size for each principal use is five acres. A conditional use permit shall not be granted unless it can be demonstrated by means satisfactory to the city that the use:
 - a. Will not result in groundwater, soil or other contamination which may endanger the public health.
 - b. Will not increase future city utility service demands and expense.
 - c. Will not jeopardize public safety and general welfare.

-
- d. No public sanitary sewer system is available to the property and is not planned to be available within the next 12 months.

(Code 1985, § 11.18(12))

Sec. 50-203. Single-family dwellings.

All single-family detached homes, except in the R-MH district shall:

- (1) Be constructed upon a continuous perimeter foundation that meets the requirements of the state uniform building code.
- (2) Not be less than 30 feet in length and not less than 22 feet in width over that entire minimum length. Width measurements shall not take account of overhang and other projections beyond the principal walls. Dwellings shall also meet the minimum floor area requirements as set out in this chapter.
- (3) Have an earth covered, composition, shingled or tiled roof, or utilize another roof material and design approved for residential uses as determined by the zoning administrator.
- (4) Receive a building permit. The application for a building permit in addition to other information required shall indicate the height, size, design and the appearance of all elevations of the proposed building and a description of the construction materials proposed to be used. The exterior architectural design of a proposed dwelling may not be so at variance with, nor so similar to, the exterior architectural design of any structure or structures already constructed or in the course of construction in the immediate neighborhood, nor so at variance with the character of the surrounding neighborhood as to cause a significant depreciation in the property values of the neighborhood or adversely affect the public health, safety or general welfare.
- (5) Meet the requirements of the state uniform building code or the applicable manufactured housing code.

(Code 1985, § 11.18(13))

Sec. 50-204. Building relocation.

- (a) The relocation of any building or structure on a lot or onto another lot within the city shall be subject to review and approval through a conditional use permit.
- (b) Upon relocation, the building shall comply with the applicable requirements of the state uniform building code.
- (c) The proposed relocated building shall comply with the character of the neighborhood in which it is being relocated as determined by an architectural review board.
- (d) The relocated use will not result in a depreciation of neighborhood or adjacent property values.
- (e) An applicant for a building relocation conditional use permit shall provide a proposed route and time for the moving operation.
- (f) An applicant for a building relocation conditional use permit shall coordinate with the building inspector to verify building code compliance requirements prior to the relocation.

(Code 1985, § 11.18(14))

Secs. 50-205—50-231. Reserved.

ARTICLE V. PARKING AND LOADING

DIVISION 1. GENERALLY

Secs. 50-232—50-255. Reserved.

DIVISION 2. OFF-STREET PARKING

Sec. 50-256. Purpose.

The regulation of off-street parking spaces in these zoning regulations is to alleviate or prevent congestion of the public right-of-way and to promote the safety and general welfare of the public, by establishing minimum requirements for off-street parking of motor vehicles in accordance with the utilization of various parcels of land or structures.

(Code 1985, § 11.19(1))

Sec. 50-257. Application of off-street parking regulations.

The regulations and requirements set forth herein shall apply to all off-street parking facilities in all of the zoning districts of the city.

(Code 1985, § 11.19(2))

Sec. 50-258. Site plan drawing necessary.

All applications for a building or an occupancy permit in all zoning districts shall be accompanied by a site plan drawn to scale and dimensioned indicating the location of off-street parking and loading spaces in compliance with the requirements set forth in this section. All site plans for single-family homes must provide for location and construction of a two-stall garage. As noted elsewhere in this chapter, garage location that will accommodate a three-stall garage is encouraged on single-family parcels. See figure of off-street parking and loading spaces below:

Off-Street Parking and Loading Spaces

| Angle | Wall to Minimum | Wall to Interlock Minimum | Interlock to Interlock Minimum |
|-------------------------------------|-----------------|---------------------------|--------------------------------|
| 30 | 48.6' | 44.5' | 40.3' |
| 45 | 56.8' | 53.4' | 50.0' |
| 60 | 62.0' | 59.7' | 57.4' |
| 90 | 64.0' | 64.0' | 64.0' |
| Parallel parking: 22 feet in length | | | |

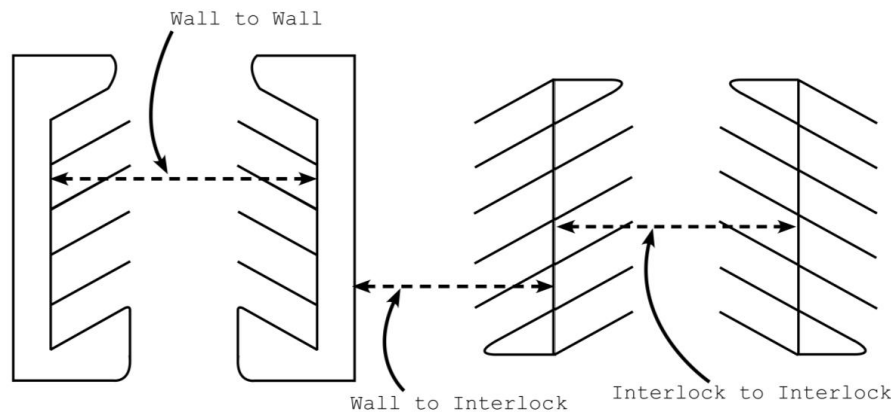


Figure 12. Off-Street Parking and Loading Spaces

(Code 1985, § 11.19(3))

Sec. 50-259. General provisions.

- (a) *Floor area.* Floor area, for the purpose of calculating the number of off-street parking spaces required, shall be determined on the basis of the exterior floor area dimensions of the buildings, structure or use times the number of floors, minus ten percent, except as may hereinafter be provided or modified. In the alternative, the parking demand may be calculated based on the net usable space without a ten percent reduction, excluding mechanical rooms, stairwells, and restrooms. The city may apply whichever calculation appears to be most applicable to the use and building in question.
- (b) *Reduction of existing off-street parking space or lot area.* Off-street parking spaces and loading spaces or lot area existing upon the effective date of the ordinance from which this section is derived shall not be reduced in number or size unless the number or size exceeds the requirements set forth herein for a similar new use.
- (c) *Nonconforming structures.* Should a nonconforming structure or use be damaged or destroyed by fire, it may be re-established if elsewhere permitted in these zoning regulations, except that in doing so, any off-street parking or loading space which existed before shall be retained.
- (d) *Change of use or occupancy of land.* No change of use or occupancy of land already dedicated to a parking area, parking spaces, or loading spaces shall be made, nor shall any sale of land, division or subdivision of land be made which reduces area necessary for parking, parking stalls, or parking requirements below the minimum prescribed by these zoning regulations.
- (e) *Change of use or occupancy of buildings.* Any change of use or occupancy of any building or buildings including additions thereto requiring more parking area shall not be permitted until there is furnished such additional parking spaces as required by these zoning regulations.
- (f) *On- and off-street parking.* On and off-street parking facilities accessory to residential use shall be utilized solely for the parking of licensed and operable passenger automobiles; no more than one truck not to exceed gross capacity of 12,000 pounds; and recreational vehicles and related trailers on which such vehicles are kept. Under no circumstances shall outdoor parking facilities accessory to residential structures be used for the storage of commercial vehicles or equipment or for the parking of automobiles belonging to the employees, owners, tenants or customers of business or manufacturing establishments, except that a

resident of the property may park one company vehicle in a legal parking space that is in compliance with the requirements of this subsection, and which the resident utilizes as a personal vehicle.

(g) *Calculating space.*

- (1) When determining the number of off-street parking spaces results in a fraction, each fraction of one-half or more shall constitute another space.
- (2) In stadiums, sports arenas, churches and other places of public assembly in which patrons or spectators occupy benches, pews or other similar seating facilities, each 22 inches of such seating facilities shall be counted as one seat for the purpose of determining requirements.
- (3) Except as provided for under joint parking and shopping centers, should a structure contain two or more types of use, each use shall be calculated separately for determining the total off-street parking spaces required.

(h) *Stall, aisle and driveway design.*

- (1) Parking space size. Except for parking spaces for the physically disabled, each parking space shall be not less than 8.5 feet wide and 20 feet in length exclusive of access aisles, and each space shall be served adequately by access aisles.
- (2) Within structures. The off-street parking requirements may be furnished by providing a space so designed within the principal building or one structure attached thereto; however, unless provisions are made, no building permit shall be issued to convert the parking structure into a dwelling unit or living area or other activity until other adequate provisions are made to comply with the required off-street parking provisions of this chapter.
 - a. Garages shall be constructed to be no less than 21 feet in interior width, and no less than 450 square feet of interior floor area.
 - b. Single-family, two-family, townhouse, and quadraminium dwellings shall be constructed with at least two garage spaces.
- (3) Except in the case of single-family, two-family, townhouse and quadraminium dwellings, parking areas shall be designed so that circulation between parking bays or aisles occurs within the designated parking lot and does not depend upon a public street or alley. Except in the case of single-family, two-family, townhouse and quadraminium dwellings, parking area design which requires backing into the public street is prohibited.
- (4) The required parking spaces serving single-family dwellings in the R-2 and R-3 districts may be designed for parking not more than two vehicles in a tandem arrangement for each dwelling unit in order to comply with the requirements of this chapter.
- (5) No curb cut access shall be located less than 40 feet from the intersection of two or more street rights-of-way. This distance shall be measured from the intersection of lot lines.
- (6) Except in the case of single-family, two-family, townhouse and quadraminium dwellings, parking areas and their aisles shall be developed in compliance with the standards on the parking lot dimensions table.
- (7) No curb cut access shall exceed 24 feet in width unless approved by the city engineer.
- (8) Except with special approval from the zoning administrator, curb cut openings shall be a minimum of five feet from the side yard property line in all districts.
- (9) Driveway access curb openings on a public street except for single-family, two-family, quadraminium and townhouse dwellings shall not be located less than 40 feet from one another.

-
- (10) The grade elevation of any parking or driveway area shall not exceed ten percent.
 - (11) Each property shall be allowed one curb cut access for each 125 feet of street frontage. All property shall be entitled to at least one curb cut. Single-family uses shall be limited to one curb cut access per property unless a conditional use permit is reviewed by the planning commission and approved by the council.
 - (12) Surfacing. All areas intended to be utilized for parking space and driveways shall be surfaced with asphalt or concrete. Plans for surfacing and drainage of driveways and stalls for five or more vehicles shall be submitted to the city engineer for his review and the final drainage plan shall be subject to his written approval.
 - (13) Striping. Except for single, two-family, townhouse and quadraminiums, all parking stalls shall be marked with white or yellow painted lines not less than four inches wide.
 - (14) Lighting. Any lighting used to illuminate an off-street parking area shall be so arranged as to be in compliance with section 50-360.
 - (15) Curbing and landscaping. Except for single-family, two-family, townhouse and quadraminiums, all open, off-street parking shall have a perimeter curb barrier around the entire parking lot and circulation area; the curb barrier shall not be closer than five feet to any lot line. Grass, plantings or screening shall be provided in all areas bordering the parking area.
 - (16) Required screening. All open, nonresidential, off-street parking areas of five or more spaces shall be screened and landscaped from abutting or surrounding residential districts in compliance with sections 50-358 and 50-359.
 - (17) Adequate space for snow storage shall be provided on the site so as not to reduce the required minimum number of parking spaces.

(Code 1985, § 11.19(4))

Sec. 50-260. Maintenance.

It shall be the joint and several responsibility of the lessee and owner of the principal use, uses or building to maintain in a neat and adequate manner, the parking space, accessways, striping, landscaping and required fences.

(Code 1985, § 11.19(5))

Sec. 50-261. Location.

All accessory off-street parking facilities as required by this chapter shall be located and restricted as follows:

- (1) Required accessory off-street parking shall be on the same lot under the same ownership as the principal use being served, except under the provisions of sections 50-265 and 50-266.
- (2) Except for single-family, two-family, townhouse and quadraminium dwellings, head-in parking, directly off of and adjacent to a public street, with each stall having its own direct access to the public street, shall be prohibited.
- (3) There shall not be any off-street parking within 15 feet of any street surface.
- (4) The boulevard portion of the street right-of-way shall not be used for parking.

-
- (5) Setback area. Except as provided in subsection (6) of this section, required accessory off-street parking shall not be provided in required front yards or in required side yards in the case of a corner lot, in A-1, R-1, R-2, R-3 and R-4 districts.
 - (6) In the case of single-family, two-family, townhouse and quadraminium dwellings, parking shall be prohibited in any portion of the required front yard except designated driveways leading directly into a garage, or one open, surfaced space located on the side of a driveway, away from the principal use. The extra space shall be surfaced with concrete or bituminous material.

(Code 1985, § 11.19(6))

Sec. 50-262. Use of required area.

Required accessory off-street parking spaces in any district shall not be utilized for open storage, sale or rental of goods, storage of inoperable vehicles as regulated by section 50-366, or storage of snow.

(Code 1985, § 11.19(7))

Sec. 50-263. Parking spaces for the physically disabled.

Except for parking areas with direct access to a street, at least one parking space for physically disabled persons shall be provided for each development with a parking area of up to 25 spaces. Additional space shall be provided in accordance with the ADA Standards for Accessible Design. Spaces for the physically disabled shall be at minimum eight feet by 20 feet, adjacent to an access place at least eight feet by 20 feet, and shall be located so as to provide convenient, priority access to the principal use.

(Code 1985, § 11.19(8))

Sec. 50-264. Number of spaces required.

- (a) *Generally.* The following minimum number of off-street parking spaces shall be provided and maintained by ownership, easement or lease for and during the life of the respective uses hereinafter set forth:
 - (1) *Single-family, two-family, townhouse and quadraminium units.* Two spaces enclosed within a garage building per unit, plus no fewer than one additional unenclosed space per three units in any attached housing development open to visitors. This requirement may be increased by the council to an appropriate level in those instances where occupancy and resulting demand is expected to exceed the two-space minimum.
 - (2) *Multiple family dwellings.*
 - a. Non age-restricted buildings. At least 1.2 rent free spaces per bedroom.
 - b. Age-restricted (senior) independent living buildings: At least two rent free spaces per three bedrooms, with additional proof of parking totaling one space per dwelling unit.
 - c. Age-restricted (senior) with services (assisted living buildings): At least two rent free spaces per three bedrooms, with additional proof of parking totaling one space per dwelling unit.
 - (3) *Motels, motor hotels, hotels.* One space per each rental unit plus one space for each ten units.
 - (4) *School, elementary and junior high.* At least one parking space for each classroom plus one additional space for each 50-student capacity. Such school shall provide additional parking for public assembly as identified in this section.

-
- (5) *Schools, high school through college, private, and day or church schools.* At least one parking space for each two students based on design capacity plus one for each classroom.
- (6) *Places of public assembly, specifically churches and other religious institutions, theatre, auditorium.* At least one parking space for each 2.5 seats based on the design capacity of the main assembly hall. Facilities as may be provided in conjunction with such buildings or uses may be subject to additional requirements which are imposed by this chapter.
- (7) *Private athletic stadiums.* At least one parking space for each eight seats of design capacity.
- (8) *Community centers, health studios, libraries, private clubs, lodges, museums, art galleries.* Ten spaces plus one for each 150 square feet in excess of 2,000 square feet of floor area in the principal structure.
- (9) *Sanitariums, convalescent home, rest home, nursing home or day nurseries.* Four spaces plus one for each three beds for which accommodations are offered.
- (10) *Drive-through establishments.*
- a. *Convenience food/fast food.* At least one parking space for each 60 square feet of gross floor area of the building. Drive-through lanes shall include at least eight stacking spaces per order board/station that do not conflict with other parking or circulation, separate from the general parking requirements listed above.
 - b. *Coffee shops.* Parking supply for building areas equal to convenience/fast food, plus drive through lanes with no fewer than 12 stacking spaces that do not conflict with other parking or circulation, separate from the general parking requirements listed above.
 - c. *Financial institutions.* Parking supply for the building areas according to the requirements for office buildings, plus drive through lanes with no fewer than four stacking spaces for each drive-through teller or ATM station.
 - d. *Pharmacy, and other retail.* Parking supply for the building areas according to the requirements for retail buildings, plus drive through lanes with no fewer than three stacking spaces for each drive-through pickup window, or other greater amount as may be determined by the zoning administrator.
- (11) *Office buildings, animal hospitals, professional offices and medical clinics.* At least one space for each 300 square feet of floor area.
- (12) *Bowling alley.* At least five parking spaces for each lane, plus additional spaces as may be required herein for related uses contained within the principal structure.
- (13) *Motor fuel station combined with motor vehicle service.* At least four off-street parking spaces plus two off-street parking spaces for each service stall. Those facilities designed for sale of other items than strictly automotive products, parts or service shall be required to provide additional parking in compliance with other applicable sections of this chapter.
- (14) *Retail store and service establishment.*
- a. *Grocery, home improvement, retail, and shopping centers in which restaurant uses are incorporated in the principal building:* At least one off-street parking space for each 200 square feet of floor area.
 - b. *Discount retail/furniture, retail showrooms and other retailers not included in a. above:* At least one off-street parking space for each 325 square feet of floor area.
 - c. *Convenience retail associated with motor fuel stations:* At least one space per each 250 square feet of gross building area, in addition to spaces required for other uses on site.

-
- (15) *Restaurants, cafes, private clubs serving food or drinks, bars, on-sale nightclubs, with:*
- a. Table full-service seating, and which may include other service delivery types, such as bar seating or common ordering. At least one space for each 50 square feet of gross building area.
 - b. Counter service, for either table seating and/or table service, such as fast-food or quick service facilities. At least one space for each 60 square feet of gross building area.
- (16) *Undertaking establishments.* At least one space for each 60 square feet of public gathering space, plus one parking space for each funeral vehicle maintained on the premises. Aisle space shall also be provided off the street for making up a funeral procession.
- (17) *Auto repair, major bus terminal, taxi terminal, boats and marine sales and repair, bottling company, shop for a trade employing six or less people, garden supply store, building material sales in structure.* Eight off-street parking spaces, plus one additional space for each 800 square feet of floor area over 1,000 square feet.
- (18) *Private skating rink, dance hall or public auction house.* 20 off-street parking spaces, plus one additional off-street parking space for each 200 square feet of floor space over 2,000 square feet.
- (19) *Golf driving range, miniature golf, archery range.* Ten off-street parking spaces, plus one for each 100 square feet of floor space.
- (20) *Manufacturing, fabricating or processing of a product or material.* One space for each 350 square feet of floor area, plus one space for each company owned truck (if not stored inside principal building).
- (21) *Warehousing, storage or handling of bulk goods.* That space which is solely used as office shall comply with the office use requirements and one space per each 750 square feet of floor area and one space for each company owned truck (if not stored inside principal building).
- (22) *Car wash.* (In addition to required magazinging or stacking space):
- a. Automatic drive-through, services. A minimum of ten spaces.
 - b. Self-service. A minimum of two spaces.
 - c. Motor fuel station car wash. Zero in addition to that required for the station, however, at least six spaces in the stacking lane shall be provided where the stacking lane will not interfere with other parking or circulation.
- (23) *Private racquetball, handball and tennis courts.* Not less than six spaces per each court.
- (24) *Nursery and landscaping operations with on-site growing fields.* One space for each 200 square feet of floor area and one space for each 500 square feet of indoor storage space and one space for each 3,000 square feet of outdoor sales/display area and one space for each 15,000 square feet of growing field area.
- (25) *Other uses.* Other uses not specifically mentioned herein or unique cases shall be determined on an individual basis by the council. Factors to be considered in such determination shall include (without limitation) size of building, type of use, number of employees, expected volume and turnover of customer traffic and expected frequency and number of delivery or service vehicles.
- (b) *Space reductions.* Subject to the review and processing of a conditional use permit as regulated by article XIII, division 3 of this chapter, the city may reduce the number of required off-street parking spaces when the use can demonstrate in documented form a need which is less than required. In such situations, the city may require land to be reserved for parking development should use or needs change as "proof of parking."

-
- (c) *Development and uses not complying with parking space requirement.* Within the B-5 zoning district, the city may approve development and uses which do not comply with the required number of parking spaces as a conditional use permit, provided that:
- (1) A development agreement running with the land is completed in which it is agreed that the property in question is financially responsible for its proportionate share of the city sponsored and provided parking space construction, maintenance, and parking site acquisition for on-street, lot or ramp parking at a maximum cost as determined from time to time by the city engineer or city planner, and for a maximum period of time as established from time to time, by the council. The responsibility shall be determined on the basis of the property's parking space shortage based upon the requirements of this Code, in relationship to the total parking space shortage, as defined by this subsection, for a defined service and benefit area. The term "service and benefit area" shall include all properties which benefit from the available public parking serving a particular retail, office, institutional, public and semi-public, and commercial neighborhood or district. The council may exempt a development from this requirement during the period of the agreement or may refund monies paid pursuant to the agreement if other means of financing are available and utilized by the city, at its sole option and election, in providing the required parking.
 - (2) The amount of parking to be provided by the developer on the property in question is the maximum amount possible, taking into account the use and design objectives of the B-5 district and the comprehensive plan, as determined by the city engineer.
 - (3) The parking shortages created by the development are not premature or in excess of the supply which can be provided by the city through a public parking system on a short- or long-term basis.
 - (4) The provisions of section 50-699 are considered and satisfactorily met.

(Code 1985, § 11.19(9); Ord. No. 2023-1 , § 1, 2-6-2023)

Sec. 50-265. Joint facilities.

The council may, after receiving a report and recommendations from the planning commission, approve a conditional use permit for one or more businesses to provide the required off-street parking facilities by joint use of one or more sites where the total number of spaces provided are less than the sum of the total required for each business should they provide them separately. When considering a request for such a permit, the planning commission shall not recommend that such permit be granted nor the council approve such a permit except when the following conditions are found to exist:

- (1) Up to 50 percent of the parking facilities required for a theatre, bowling alley, dance hall, bar or restaurant may be supplied by the off-street parking facilities provided by types of uses specified as primarily daytime uses in subsection (4) of this section.
- (2) Up to 50 percent of the off-street parking facilities required for any use specified, under subsection (4) of this section, as primarily daytime uses may be supplied by the parking facilities provided by the following nighttime or Sunday uses: auditoriums incidental to a public or parochial school, churches, bowling alleys, dance halls, theatres, bars, apartments or restaurants.
- (3) Up to 80 percent of the parking facilities required by this section for a church or for an auditorium incidental to a public or parochial school may be supplied by the off-street parking facilities provided by uses specified in subsection (4) of this section as primarily daytime uses.
- (4) For the purpose of this section, the following uses are considered as primarily daytime uses: banks, business offices, retail stores, personal service shops, household equipment or furniture shops, clothing or shoe repair or service shops, manufacturing, wholesale and similar uses.

(5) Conditions required for joint use:

- a. The building or use for which application is being made to utilize the off-street parking facilities provided by another building or use shall be located within 300 feet of such parking facilities.
- b. The application shall show that there is no substantial conflict in the principal operating hours of the two buildings or uses (for which joint use of off-street parking facilities is proposed).
- c. A properly drawn legal instrument, executed by the parties concerned for joint use of off-street parking facilities, duly approved as to form and manner of execution by the city attorney, shall be filed with the city clerk and recorded with the county recorder.

(Code 1985, § 11.19(10))

Sec. 50-266. Off-site parking.

Any off-site parking which is used to meet the requirements of this chapter shall be a conditional use as regulated by article XIII, division 3 of this chapter and shall be subject to the following conditions:

- (1) Off-site parking shall be developed and maintained in compliance with all requirements and standards of this chapter.
- (2) Reasonable access from off-site parking facilities to the use being served shall be provided.
- (3) Except as provided in subsection (6) of this section, the site used for meeting the off-site parking requirements of this chapter shall be under the same ownership as the principal use being served or under public ownership.
- (4) Off-site parking for multiple-family dwellings shall not be located more than 100 feet from any normally used entrance of the principal use served.
- (5) Except as provided in subsection (6) of this section, off-site parking for nonresidential uses shall not be located more than 500 feet from the main public entrance of the principal use being served.
- (6) Any use which depends upon off-site parking to meet the requirements of this chapter shall maintain ownership and parking utilization of the off-site location until such time as on-site parking is provided or a site in closer proximity to the principal use is acquired and developed for parking.
- (7) Compliance with off-street parking requirements provided through leased off-street parking may be approved by the council, subject to the following additional conditions:
 - a. The lease shall specify the total number and location of parking spaces under contract and this number, when added to any on-site parking required, must be equal to the total number of parking spaces required.
 - b. The lease instrument shall legally bind all parties to the lease and provide for amendment or cancellation only upon written approval from the city.
 - c. The lease agreement shall incorporate a release of liability and any other provisions, as recommended by the city attorney that are deemed necessary to ensure compliance with the intent of this chapter.

(Code 1985, § 11.19(11))

Secs. 50-267—50-295. Reserved.

DIVISION 3. OFF-STREET LOADING

Sec. 50-296. Purpose.

The regulation of loading spaces in these zoning regulations is to alleviate or prevent congestion of the public right-of-way so as to promote the safety and general welfare of the public, by establishing minimum requirements for off-street loading and unloading from motor vehicles in accordance with the specific and appropriate utilization of various parcels of land or structures.

(Code 1985, § 11.20(1))

Sec. 50-297. Location.

- (a) *Off-street.* All required loading berths shall be off-street and located on the same lot as the building or use to be served.
- (b) *Distance from intersection.* All loading berth curb cuts shall be located at a minimum 50 feet from the intersection of two or more street rights-of-way. This distance shall be measured from the property line.
- (c) *Distance from residential use.* No loading berth shall be located closer than 100 feet from a residential district unless within a structure.
- (d) *Prohibited in front yards.* Loading berths shall not occupy the required front yard setbacks.
- (e) *Conditional use permit required.* A conditional use permit shall be required for new loading berths added to an existing structure, where the loading berth is located at the front or at the side of the building on a corner lot.
 - (1) *Pedestrians.* Loading berths shall not conflict with pedestrian movement.
 - (2) *Visibility.* Loading berths shall not obstruct the view of the public right-of-way from off-street parking access.
 - (3) *General compliance.* Loading berths shall comply with all other requirements of this section.
- (f) *Traffic interference.* Each loading berth shall be located with appropriate means of vehicular access to a street or public alley in a manner which will cause the least interference with traffic.

(Code 1985, § 11.20(2))

Sec. 50-298. Surfacing.

All loading berths and accessways shall be improved with not less than six-inch class five base and two-inch bituminous surfacing to control the dust and drainage according to a plan submitted to and subject to the approval of the city engineer.

(Code 1985, § 11.20(3))

Sec. 50-299. Accessory use; parking and storage.

Any space allocated as a required loading berth or access drive so as to comply with the terms of these zoning regulations shall not be used for the storage of goods, inoperable vehicles or snow and shall not be included as part of the space requirements to meet the off-street parking requirements.

(Code 1985, § 11.20(4))

Sec. 50-300. Screening.

Except in the case of multiple dwellings, all loading areas shall be screened and landscaped from abutting and surrounding residential uses in compliance with section 50-358.

(Code 1985, § 11.20(5))

Sec. 50-301. Size.

- (a) *Nonresidential developments.* Unless otherwise specified in these zoning regulations, the first loading berth shall be not less than 70 feet in length and additional berths required shall be not less than 30 feet in length and all loading berths shall be not less than ten feet in width and 14 feet in height, exclusive of aisle and maneuvering space.
- (b) *Multiple-family dwellings.* The size and location of the required loading berth shall be subject to the review and approval of the city engineer and the city planner.

(Code 1985, § 11.20(6))

Sec. 50-302. Number of loading berths required.

The number of required off-street loading berths shall be as follows:

- (1) *Commercial or industrial uses.* Except within the B-5 district, all buildings shall have at least one off-street loading berth.
- (2) *Multiple-family dwellings.* One off-street loading berth shall be provided for each principal dwelling structure in excess of four units.
- (3) *Any use.* In the case of any development, including single-family detached dwellings, the council shall have the right to require an off-street loading facility which meets the demand of the activity generated by the respective use. Commercial properties may provide loading spaces within the parking and circulation area of the property when the property owner or tenant can show that loading activities occur off-hours.

(Code 1985, § 11.20(7))

Secs. 50-303—50-322. Reserved.**ARTICLE VI. BUILDING AND PERFORMANCE REQUIREMENTS****DIVISION 1. GENERALLY**

Sec. 50-323. Site/building plan review.

- (a) *Purpose.* The purpose of this article is to establish a formal plan review procedure and provide regulations pertaining to the enforcement of site design and construction standards as agreed to by the contractor through his officially submitted plan documents.
- (b) *Plan required.* In addition to other plan requirements outlined in this chapter, site and construction plans will be required and shall be submitted to and approved by the building official prior to the issuance of any building permit.
- (c) *Council action not required.*
 - (1) When the development of land is proposed for a lot of record, and the zoning administrator determines that the proposal meets all applicable zoning requirements, no formal review of the plans shall be required by the planning commission or city council. The zoning administrator shall report regularly to the commission and council as to building activity. Building and site plans for multiple-family, commercial or industrial construction shall be subject to review by the planning commission and approval by the council when any zoning permit or subdivision application is necessary for complete processing under the requirements of this chapter or the city's subdivision regulations.
 - (2) In all cases where developments are proposed for locations adjacent to state trunk highways 55 and 25, a site plan for such proposed development shall be provided for review by the planning commission and the council for informational purposes. Property developers are encouraged to introduce their projects to the planning commission and city council when available.
 - (3) Concept plan review. Prior to submission of an application for a zoning action or permit (such as a conditional use permit, variance, or rezoning application), applicants may request a concept plan review to seek preliminary feedback on their development plans from the planning commission and city council. Such concept plan review shall have a separate fee and escrow as provided in the city fee schedule. Concept plan reviews are intended to gain comment and feedback only, and no such comment or feedback shall be binding on any party in relation to any future zoning application.
- (d) *Plan agreements.* All site and construction plans officially submitted to the city shall be treated as a formal agreement between the building contractor and the city. Once approved, no changes, modifications or alterations shall be made to any plan detail, standard or specifications without prior submission of a plan modification request to the building official for his review and approval.
- (e) *Enforcement.* The building official shall have the authority to order the stopping of any and all site improvement activities, when and where a violation of the provisions of this section has been officially documented by the building official.

(Code 1985, § 11.21)

Sec. 50-324. Certificate of occupancy.

- (a) *No building or structure erected or moved without certificate.* Except for farm buildings, no building or structure hereafter erected or moved, or that portion of an existing structure or building erected or moved shall be occupied or used in whole or in part for any purpose whatsoever until a certificate of occupancy shall have been issued by the building official stating that the building or structure complies with all of the provisions of this chapter and applicable state building code sections.
- (b) *Application.* The certificate shall be applied for coincident with the application for a building permit, conditional use permit, or variance and shall be issued within ten days after the building official shall have

found the building or structure satisfactory and given final inspection. The application shall be accompanied by a fee as established by ordinance.

(Code 1985, § 11.11)

Secs. 50-325—50-351. Reserved.

DIVISION 2. DESIGN STANDARDS AND SPECIFICATIONS

Sec. 50-352. Purpose.

The purpose of this division is to establish general development performance standards. These standards are intended and designed to:

- (1) Assure compatibility of uses;
- (2) Prevent urban blight, deterioration and decay; and
- (3) To enhance the health, safety and general welfare of the residents of the city.

(Code 1985, § 11.17(1))

Sec. 50-353. Building use restriction.

- (a) No garage, tent, accessory building or motor home shall at any time be used as living quarters, temporarily or permanently.
- (b) Basements and cellars may be used as living quarters or rooms as a portion of the principal residential dwelling. Energy conserving designs in housing are not prohibited by this provision of this division, provided that a conditional use permit is approved by the council and the structure complies with standards imposed by the state and city building code.
- (c) Tents, playhouses or similar structures may be used for play or recreational purposes on a temporary basis when accessory to residential dwellings.
- (d) No tent, canvas hoop structure, or any other structure not meeting the building code, or not complying with the building materials requirements of this chapter, shall be used for any principal or accessory use, unless specifically provided for by this chapter.
- (e) Pursuant to the allowances in M.S.A. § 462.3593, the city opts out of the provisions of the statute, prohibiting the use of temporary health care dwellings as otherwise authorized. Any accessory dwelling, whether consistent with the statute, or otherwise, shall meet applicable requirements of this Code.

(Code 1985, § 11.17(2))

Sec. 50-354. Platted and unplatted property.

- (a) Any person desiring to improve property shall submit to the building official a certificate of survey of the premises and information on the location and dimensions of existing and proposed buildings, location of easements crossing the property, encroachments, and any other information which may be necessary to insure conformance to provisions of this Code.

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- (b) All buildings shall be so placed so that they will not obstruct future streets which may be constructed by the city in conformity with existing streets and according to the system and standards employed by the city.
 - (c) Except in the case of properties in shoreland or floodplain districts and except where sanitary sewer has not previously been provided to the lot, a lot of record existing upon the effective date of the ordinance from which this section is derived in a residence district, which does not meet the requirements of this chapter as to area or width may be utilized for single-family detached dwelling purposes, provided the measurements of such area or width are at least 60 percent of the requirements of this chapter. This section is not intended to allow reduction in setbacks and required yards.
 - (d) Except in the case of planned unit developments as provided for in article III of this chapter, not more than one principal building shall be located on a lot. The words "principal building" shall be given their common, ordinary meaning as defined in section 50-3, in case of doubt or on any questions or interpretation the decision of the zoning administrator shall be final, subject to the right to appeal in accordance with the terms and procedures specified in this chapter.
 - (e) On a through lot (a lot fronting on two generally parallel streets), both street lines shall be front lot lines for applying the yard and parking setback regulations of this chapter, unless otherwise specifically provided for in this chapter.

(Code 1985, § 11.17(3))

Sec. 50-355. Accessory buildings and structures.

- (a) Farm buildings are exempt from the requirements of this subdivision.
- (b) The total floor area for a detached accessory building and attached garage shall not exceed 1,200 square feet on a single-family residential lot except by conditional use permit.
- (c) A garage shall be considered an integral part of the principal building if it is attached to the principal building or is connected to it by a covered passageway. For the purposes of measuring allowable garage space, no conditional use permit for accessory garage size shall be granted that results in the total garage footprint area exceeding the footprint size of the principal residence building. When attached living space is built over attached garage space, living space shall be counted toward the principal residence footprint area, and the garage space shall be counted toward the accessory garage space allowance.
- (d) Accessory buildings may encroach into the required side and rear yard setbacks applicable to principal buildings, except, however, that no such encroachment may occur on required side yard setbacks abutting street in the case of a corner lot. For detached accessory buildings, the following standards shall apply: See Figure 13:
 - (1) The accessory building or structure shall not exceed 25 percent of the rear yard.
 - (2) With the exception of swimming pools, all other accessory buildings and structures in the A-1, R-R and R-1 districts shall be set back from all adjoining lots a distance equivalent to the height of the accessory building and shall be located at least ten feet away from any other building or structure on the same lot.
 - (3) Swimming pools in the A-1, R-R, and R-1 districts shall not be located within five feet of any principal structure, frost footing or side or rear yard lot line.
 - (4) In all districts other than A-1, R-R and R-1, accessory buildings and structures shall be set back from all adjoining lots a distance equivalent to five feet. Accessory buildings and structures shall be located ten feet away from any other building or structure on the same lot.
 - (5) No accessory building or structure shall be located within a utility easement.

- (6) Garages having direct access onto an alley shall be set back 20 feet.

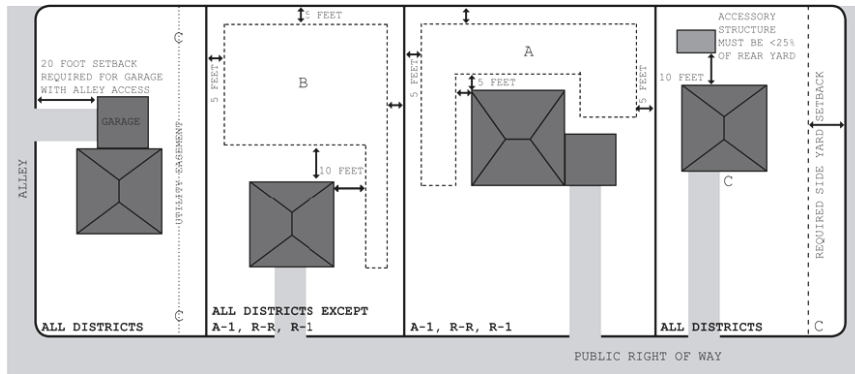


Figure 13. Garage District Access

- (e) Except as expressly permitted by conditional use permit, accessory buildings shall comply with the following height limitations:

| <i>Zoning District</i> | <i>Maximum Height</i> |
|------------------------|-----------------------|
| A-1 | 20 feet |
| R-R | 20 feet |
| R-1 | 20 feet |
| R-2 | 15 feet |
| R-3 | 15 feet |
| R-4 | ¹ 10 feet |
| R-5 | 15 feet |
| R-6 | 15 feet |
| R-7 | 15 feet |

¹ R-4 Except garages which shall not exceed 15 feet, accessory buildings in all other zoning districts shall be limited to 20 feet.

- (f) The same or similar quality exterior building material shall be used in the accessory building and in the principal building. All accessory buildings shall also be compatible with the principal building on the lot. The term "compatible" means that the exterior appearance of the accessory building is not at variance with the principal building from an aesthetic and architectural standpoint as to cause:
- (1) A difference to a degree to cause incongruity as determined by an architectural review board; or
 - (2) A depreciation of neighborhood or adjacent property values.
- (g) Conditional use permits. The height and area limits for accessory buildings may not exceed that allowed in subsections (c), (d), and (e) of this section, except by a conditional use permit. In addition, no permit shall be issued for the construction of more than one accessory building per lot in residential zones except by conditional use permit. Application for a conditional use permit under this subsection shall be regulated by article XIII, division 3 of this chapter. Such a conditional use permit may be granted, provided that:
- (1) There is a demonstrated need and potential for continued use of the structure for the purpose stated.
 - (2) No commercial or home occupation activities are conducted on the property.

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- (3) The building has an evident reuse or function related to a single-family residential environment in urban service areas or hobby farm environment in non-urban service areas of the city.
 - (4) Accessory building shall be maintained in a manner that is compatible with the adjacent residential uses and does not present a hazard to public health, safety and general welfare.
 - (5) The provisions of section 50-699 shall be considered and a determination made that the proposed activity is in compliance with such criteria.
- (h) Outlots. Temporary/seasonal docks shall be allowed upon designated outlots, provided that:
- (1) The outlot is owned by owners of a conforming parcel within the shoreland/floodplain district.
 - (2) Only one dock, which may accommodate the storage of two watercraft, is permitted per 75 feet of lakeshore.

(Code 1985, § 11.17(4))

Sec. 50-356. Drainage plans.

- (a) No land shall be developed and no use shall be permitted that results in water runoff causing flooding, erosion, or deposit of minerals on adjacent properties. Such runoff shall be properly channeled into a storm drain, watercourse, ponding area, or other public facilities subject to the review and approval of the city engineer.
- (b) In the case of all residential subdivisions, multiple-family, business and industrial developments, the drainage plans shall be submitted to the city engineer for his review and the final drainage plan shall be subject to his written approval. In the case of such uses, no modification in grade and drainage flow through fill, erection of retaining walls or other such actions shall be permitted until such plans have been reviewed and received written approval from the city engineer.
- (c) Except for written authorization of the zoning administrator, the top of the foundation and garage floor of all structures shall be one foot above the grade of the crown of the street.

(Code 1985, § 11.17(5))

Sec. 50-357. Fences.

Fences shall be permitted in all yards, subject to the following:

- (1) *Permit required.* It is unlawful for any person, except on a farm and related to farming, to hereafter construct or cause to be constructed or erected within the city, any fence without first making an application for and securing a building permit.
- (2) *Locations.* All fences shall be located entirely upon the private property of the person constructing, or causing the construction, of such fence and shall be set back two feet from all lot lines unless the owner of the property adjoining agrees, in writing, that such fence may be erected on the division line of the respective properties. The building official may require the owner of the property upon which a fence now exists or may require any applicant for a fence permit to establish the boundary lines of his property by a survey thereof to be made by any registered land surveyor, or other appropriate and effective means.
- (3) *Construction and maintenance.* Every fence shall be constructed in a substantial, workman-like manner and of substantial material reasonably suited for the purpose for which the fence is proposed to be used. Every fence shall be constructed in such a way that the more finished side, in the judgement of

the building official, shall face out, away from the property on which it is located and toward neighboring property or public spaces. Every fence shall be maintained in a condition of reasonable repair and shall not be allowed to become and remain in a condition of disrepair or danger, or constitute a nuisance, public or private. Disrepair shall include, but not be limited to, conditions such as broken or rotted boards or fence portions, posts more than ten percent out of true vertical alignment, peeling paint, or other similar conditions. Any such fence which is, or has become dangerous to the public safety, health or welfare, is a public nuisance, and the zoning administrator shall commence proper proceedings for the abatement thereof. Link fences, wherever permitted shall be constructed in such a manner, that no barbed ends shall be at the top. Electric fences shall only be permitted in the A-1 and R-A district when related to farming, and on farms in other districts when related to farming, but not as boundary fences. Barbed wire fences shall only be permitted on farms except as hereinafter provided.

- (4) *Solid walls.* Solid walls eight feet in height may be constructed and maintained only in the buildable area of a lot only by a conditional use permit.
- (5) *Corner lots.* On corner lots, no fence or screen shall be permitted within the triangular area defined as beginning at the intersection of the property line or right of line of two intersecting streets, thence 30 feet from the point of beginning on the other property or right-of-way line, thence to the point of beginning, unless the fence or screening is at least 75 percent open or less than 30 inches in height above the centerline of the adjoining streets. See Figure 14 as follows:

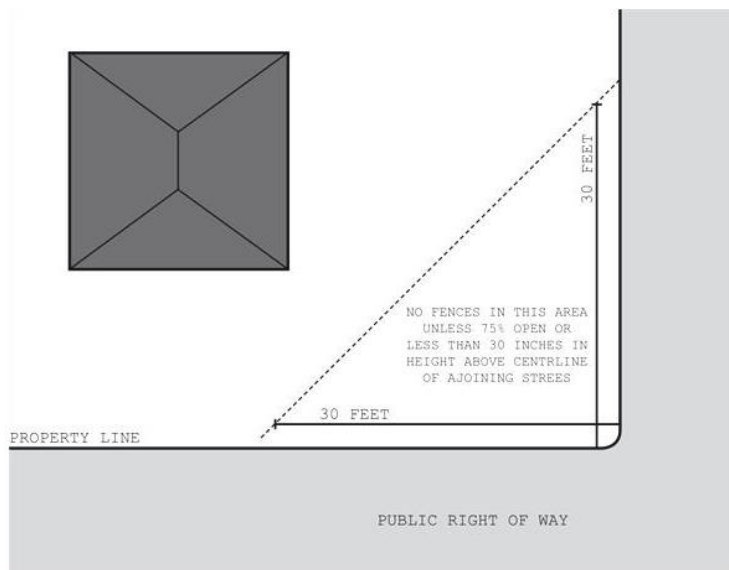


Figure 14. Corner Lots

- (6) *Residential fencing and screening.*
 - a. Except as provided herein, fences shall be at least five percent open for passage of air and light.
 - b. Except as provided herein, fences outside the buildable area of a lot may not exceed six feet in height.
 - c. Except as provided herein, fences within the buildable area of a lot or in the case of the rear lot line at least ten feet from the rear lot line, may not exceed eight feet in height.
 - d. Fences extending across front yards shall not exceed 48 inches in height and shall be at least 75 percent open space for passage of air and light, except that fences which abut public rights-of-

way which are designated and constructed as alleys shall not exceed six feet in height, shall be at least five percent open for passage of air and light, and shall be set back from the alley right-of-way a minimum of five feet. All such fences shall conform to subsection (8) of this section. See Figure 15.

- e. Except as permitted by subsection (6)f of this section, yard requirements of through lots defined in section 50-355(e) also apply to fence requirements, and yards on both streets shall be front yards. See Figure 15.
- f. On lots where a collector or arterial street abuts their side or rear property line, fences shall be set back from the collector street right-of-way a minimum of 20 feet and shall not exceed six feet in height. All such fences located on corner lots shall conform to subsection (6)e of this section. See Figure 15. Fences in the rear yards of such lots which are less than 20 feet from the right-of-way shall conform to all other requirements of this section for fences in front yards.

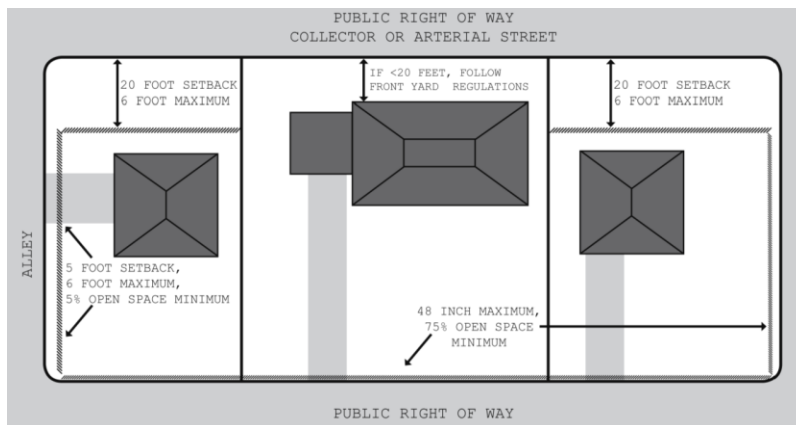


Figure 15. Fences

(7) Swimming pool protection.

- a. A permit shall be required for permanent swimming, temporary swimming, special use, and spa pools constructed below ground and above ground level considered to be of permanent construction with a capacity of more than 5,000 gallons and/or two feet or more of depth. Each application for a permit to construct or erect a swimming pool shall be accompanied by plans of sufficient detail to show:
 1. The proposed location and its relationship to the other principal buildings on the lot.
 2. The size of the pool.
 3. Fencing and other fixtures existing on the lot, including utility location and trees.
 4. The location, size and types of equipment to be used in connection with the pool, including, but not limited to, the filter unit, pump fencing and the pool itself.
 5. That the requirements contained in subsection (7)b of this section will be satisfied.
- b. All belowground and aboveground pools for which a permit is required and granted shall be provided with safety fencing to prevent uncontrolled access meeting the following standards:
 1. All safety fencing shall be a minimum of four feet in height and be constructed as to completely enclose the pool.

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2. All gates shall be equipped with self-closing, self-latching gates capable of being locked. The latches shall be placed at least three feet above ground.
 3. There shall be no opening in the fence greater than four inches.
 4. There shall be no opening below the fence greater than two inches.
 5. The fence shall be constructed of non-corrosive materials.
 6. The fence shall not be of a readily climbable design, including:
 - (i) No footholds or handholds.
 - (ii) Chainlink fencing shall not exceed 1½ inch mesh.

Belowground pools with an ASTM standard certified pool cover do not require fencing.

- c. An aboveground swimming pool with sidewalls that are at least four feet high does not require enclosure by a separate fence as long as the pool has a removable or lock-up ladder, gate, or other access entry point. This ladder or access shall be secured or removed to prevent access when the facility is not in use or unattended.
- (8) *Business and industrial fencing.*
- a. Business and industrial fences may be erected up to eight feet in height. Fences in excess of eight feet shall require a conditional use permit.
 - b. Business and industrial fences with barbed wire security arms shall be erected a minimum of six feet in height (measured without the security arm). The security arm shall be angled in such a manner that it extends only over the property of the permit holder and does not endanger the public.
- (9) *Special purpose fences.* Fences for special purposes and fences differing in construction, height or length may be permitted in any district in the city by issuance of a conditional use permit review by the planning commission and approved by the council. Findings shall be made that the fence is necessary to protect, buffer or improve the premises for which the fence is intended, and that there are special conditions present that distinguish the need for a fence that is not consistent with the generally applicable regulations.

(Code 1985, § 11.17(6))

Sec. 50-358. Required fencing, screening and landscaping.

- (a) *Fencing and screening.* Where any business or industrial use (i.e., structure, parking or storage) abuts property zoned for residential use, that business or industry shall provide screening along the boundary of the residential property. Screening shall also be provided where a business or industry is across the street from a residential zone, but not on that side of a business or industry considered to be the front (as defined by this chapter). All fencing and screening specifically required by this chapter shall be subject to section 50-359 and shall consist of either a fence or a green belt planting strip as provided for in the following subsections.
- (1) A green belt planting strip shall consist of evergreen trees or deciduous trees and plants and shall be of sufficient width and density to provide an effective visual screen. This planting strip shall be designed to provide complete visual screening to a minimum height of six feet. Earth mounding or berms may be used but shall not be used to achieve more than three feet of the required screen. The planting plan and type of plantings shall require the approval of the council.

- (2) A required screening fence shall be constructed of masonry, brick, wood or metal. Such fence shall provide a solid screening effect six feet in height. The design and materials used in constructing a required screening fence shall be subject to the approval of the council. Fences in excess of six feet in height shall require approval of the zoning administrator and the building official.
- (b) *Landscaping; general residential.* The lot area remaining after providing for off-street parking, off-street loading, sidewalks, driveways, building site and/or other requirements shall be landscaped using ornamental grass, shrubs, trees or other acceptable vegetation or treatment generally used in landscaping within one year following the date of building occupancy. Fences or trees placed upon utility easements are subject to removal if required for the maintenance or improvement of the utility. Trees on utility easements containing overhead wires shall not exceed 20 feet in height. The planting of large trees is not recommended under overhead wires.
- (1) For single- and two-family parcels, the lot shall be sodded with suitable lawn grasses from the front curb line to the rear building line on both sides of the structure. The remainder of the rear portion of the lot shall be seeded with similar grass variety. Areas planted as gardens with trees, shrubs, and/or perennial plants shall be mulched, and shall be exempt from the requirement for seed or sod. When a structure is constructed on a lot with more than one frontage, the entire parcel shall be sodded.
- (2) No fewer than two overstory trees per street frontage shall be planted on each parcel.
- (3) This requirement shall be the joint and several responsibility of the developer, builder, and/or the buyer of any lot, and may be enforced by any remedy available to the city.
- (c) *Landscaping; new residential subdivision, semi-public and all income producing property uses.* Excluding residential structures containing less than four dwelling units). Prior to approval of a building permit, all referenced uses in subsections (a) and (b) of this section shall be subject to mandatory landscape plan and specification requirements. The landscape plan should be developed with an emphasis upon the following areas:
- (1) *Boundary or perimeter.* The boundary or perimeter of the proposed site at points adjoining other property and the immediate perimeter of the structure.
- (2) *Standards and criteria of plan.* All landscaping incorporated in the plan shall conform to the following standards and criteria:
- a. *Minimum size.* All plants must at least equal the following minimum size:

| | <i>Potted/Bare Root</i> | <i>Balled and Burlapped</i> |
|---|-------------------------|-----------------------------|
| Shade trees ¹ | 2-inch diameter | 2-inch diameter |
| Half trees (Flowering crabs, Russian olive, Hawthorn, etc.) | 6—7 feet | 1½-inch diameter |
| Evergreen trees | — — — — | 3—4 feet |
| Tall shrubs and hedge materials (Evergreen or deciduous) | 3—4 feet | 3—4 feet |
| Low shrubs | | |
| Deciduous | 18—24 inch | 24—30 inch |
| Evergreen | 18—24 inch potted | 24—30 inch |
| Spreading evergreen | 18—24 inch potted | 18—24 inch |

¹ Type and mode are dependent upon time of planting season, availability, and site conditions (soils, climate, groundwater, manmade irrigation, grading, etc.).

- b. *Spacing.*

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1. Plant material centers shall not be located closer than three feet from the fence line or property line and shall not be planted to conflict with public plantings based on the judgment of the city staff.
 2. Where plant materials intended to provide screening are planted in two or more rows, plantings shall be staggered in rows unless otherwise approved by the city staff.
 3. Deciduous trees shall be planted not more than 40 feet apart.
 4. Where massing of plants or screening is intended, large deciduous shrubs shall not be planted more than four feet on center or evergreen shrubs shall not be planted more than three feet on center.
- c. *Types of new trees.* Plantings, suitable trees include:
1. Oak - *Quercus* (varieties).
 2. Norway maple (and Schwedler, Emerald queen, etc.) - *Acer platanoides* (and varieties).
 3. Sugar Maple - *Acer saccharum*.
 4. Hackberry - *Celtis occidentalis*.
 5. Birch - *Betula* (varieties).
 6. Honeylocust (Imperial, Majestic skyline, Sunburst and Thornless) - *Gleditsia triacanthos*.
 7. Linden varieties - *Tilia* varieties.
 8. Ginkgo - *Ginkgo biloba* (male tree only).
 9. Kentucky coffee tree - *Gymnocladus dioica*.
 10. Other species may be acceptable as approved by the zoning administrator.
- d. *Design.*
1. The landscape plan must show some form of designed site amenities, (i.e., composition of plant materials, or creative grading, decorative lighting, exterior sculpture, etc., which are largely intended for aesthetic purposes).
 2. All areas within the property lines (or beyond, if site grading extends beyond) shall be treated. All exterior areas not paved or designated as roads, parking or storage, must be planted into ornamental vegetation (lawns, ground covers or shrubs) unless otherwise approved by the zoning administrator.
 3. Turf slopes in excess of 4:1 are prohibited.
 4. All ground areas under the building roof overhang must be treated with a decorative mulch or foundation planting.
 5. All buildings must have an exterior water spigot to ensure that landscape maintenance can be accomplished. In addition, all multifamily, commercial, institutional, and industrial developments shall utilize in-ground irrigation for all landscaped areas, unless specifically approved by the zoning administrator based on a demonstration that the design and materials used will not need regular irrigation.
 6. Quantities. Minimum landscape quantities shall be listed in the individual zoning districts.
- e. *Landscape guarantee.* All new plants shall be guaranteed for two full years from the time planting has been completed. All plants shall be alive and in satisfactory growth at the end of the guarantee period or be replaced.

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- f. *Existing trees.* With respect to existing trees in new developments, all trees on the site are to be saved which do not have to be removed for street, buildings, utilities, drainage or active recreational purposes. Trees over six inches in diameter that are to remain, are to be marked with a red band, and to be protected with snow fences or other suitable enclosure, prior to any excavation. The city may further require that the developer retain a professional forester to prepare a forest inventory and management plan for the development, in order to control and abate any existing or potential shade tree disease.
 - g. *Tree replacement.* When more than 50 percent of the existing tree crown cover is proposed to be removed to accommodate development, the owner or developer shall be required to prepare a tree replacement plan. Such plan shall provide that replacement trees are to be planted at a rate of one caliper inch of planting for each one caliper inch of tree removal, up to a maximum required replacement planting of 40 caliper inches per acre of planting for all trees removed above the 50 percent removal threshold. The tree crown cover shall be measured by the zoning administrator utilizing the maximum tree crown cover shown by aerial photography at any time in the last five years.
- (d) *Mechanical equipment.* All mechanical equipment such as air conditioning units, etc., erected on the roof of any structure, shall be screened so as not to be visible from the property line when abutting neighboring private property, or from the centerline of any abutting public street.

(Code 1985, § 11.17(7))

Sec. 50-359. Traffic visibility.

On corner lots in all districts, no structure or planting in excess of 30 inches above the street centerline grade shall be permitted within a triangular area defined as follows: beginning at the intersection of the projected property lines of two intersecting streets, thence 30 feet from the point of beginning on the other property line, thence to the point of beginning.

(Code 1985, § 11.17(8))

Sec. 50-360. Glare.

Any lighting used to illuminate an off-street parking area, sign or other structure, shall be arranged as to deflect light away from any adjoining residential zone or from the public streets. Direct or sky-reflected glare, where from floodlights or from high temperature processes such as combustion or welding shall not be directed into any adjoining property. The source of lights shall be hooded or controlled in some manner so as not to light adjacent property. Bare light sources shall not be permitted in view of adjacent property or public right-of-way. Any light or combination of lights which cast light on a public street shall not exceed one footcandle (meter reading) as measured from the right-of-way line of the street. Any light or combination of lights which cast light on neighboring commercial or industrial property shall not exceed one footcandle (meter reading) as measured at the property line. Any light of combination of lights adjacent to neighboring residential or property other than commercial or industrial shall be designed to have a zero footcandle meter reading at the property line.

(Code 1985, § 11.17(9))

Sec. 50-361. Smoke.

The emission of smoke by any use shall be in compliance with and regulated by Minn. R. ch. 7009, ambient air quality standards. Outdoor wood-burning furnaces shall not be allowed within the city limits. The burning of

combustible materials outside of the principal building shall only be allowed in accordance with the recreational fires requirements of this Code.

(Code 1985, § 11.17(10))

Sec. 50-362. Dust and other particulated matter.

The emission of dust, fly ash or other particulated matter by any use shall be in compliance with Minn. R. ch. 7009 ambient air quality standards.

(Code 1985, § 11.17(11))

Sec. 50-363. Odors.

The emission of odor by any use shall be in compliance with Minn. R. ch. 7009, ambient air quality standards.

(Code 1985, § 11.17(12))

Sec. 50-364. Noise.

Noises emanating from any use shall be in compliance with Minn. R. ch. 7030, noise pollution control.

(Code 1985, § 11.17(13))

Sec. 50-365. Refuse.

(a) *Removal.*

- (1) Passenger automobiles and trucks not currently licensed by the state, or which are because of mechanical deficiency incapable of movement under their own power, parked or stored outside for a period in excess of 30 days, and all materials stored outside in violation of provisions of this Code are considered refuse or junk and shall be disposed of.
- (2) Any accumulation of refuse on any premises not stored in containers which comply with provisions of this Code, or any accumulation of refuse on any premises which has remained thereon for more than one week is declared to be a nuisance and may be abated by order of the health officer, as provided by M.S.A. ch. 145A and the cost of abatement may be assessed on the property where the nuisance was found, as provided by law.
- (3) Waste resulting from the handling, storage, sale, preparation, cooking and serving of foods with insufficient liquid content to be free flowing is called garbage. The storage and removal of this refuse must meet the provisions of this Code.

(b) *Location and screening.*

- (1) All refuse and refuse handling equipment, including, but not limited to, charitable donation boxes, garbage cans and dumpsters shall be stored within the principal structure, within an accessory building, or totally screened from eye-level view for all uses, except for the following:
 - a. Detached single-family residences.
 - b. Double bungalows and duplexes.
 - c. All other residential structures with four dwelling units or less.

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- (2) Screening shall be at least six feet in height and provide a minimum opaqueness of 80 percent at the time of construction or planting. Accessory structures shall comply with minimum setback requirements and shall be constructed of materials similar to those of the principal building. Attached trash enclosures are preferred, and no trash handling areas shall be permitted where they would be visually prominent or obstruct traffic visibility. All dumpsters and trash handling equipment shall be kept in a good state of repair with tight-fitting lids to prevent spilling of debris.
 - (3) For public health purposes, uses existing on the effective date of the ordinance from which this section is derived shall come into compliance at the time of the grant of any building permit or zoning permit on the property.

(Code 1985, § 11.17(14))

Sec. 50-366. Outside storage; residential, commercial and industrial uses.

- (a) All outside storage of materials and equipment for residential uses (excluding farms) shall be stored within a building or fully screened so as not to be visible from adjoining properties, except for the following:
 - (1) Clothesline pole and wire.
 - (2) Not more than two recreational vehicles and equipment.
 - (3) Construction and landscaping material currently being used on the premises.
 - (4) On and off-street parking of currently registered and operable passenger vehicles and trucks not exceeding a gross weight of 12,000 pounds.
 - (5) Lawn furniture or furniture used and constructed explicitly for outdoor use.
 - (6) Rear or side yard exterior storage of firewood for the purpose of consumption only by the person on whose property it is stored.
- (b) Only when specifically allowed by district use provisions, outside storage of equipment, materials and inventory as a principal or accessory use for commercial and industrial uses shall require a conditional use permit subject to the provisions of article XIII, division 3 of this chapter and all nonresidential outside storage shall conform to the following conditions in addition to all conditions imposed by the applicable zoning district:
 - (1) The area occupied is not within a required front or required side yard.
 - (2) The storage area is totally fenced, fully screened and landscaped according to a plan approved by the zoning administrator and a landscape guarantee as determined by the zoning administrator is provided.
 - (3) If abutting an R district or use, screening and landscaping is provided according to a plan approved by the zoning administrator.
 - (4) The storage area is grassed or hard surfaced to control dust. Should a grassed surface prove to be unmaintainable, the city shall require that a hard surface be installed within three months of formal written notice to the property owner.
 - (5) All lighting shall be hooded and so directed that the light source shall not be visible from the public right-of-way or from neighboring residences and shall be in compliance with subsection (b)(9) of this section.
 - (6) The storage area does not encroach upon required parking space, required loading space, or snow storage area as required by this chapter.

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- (7) A site plan documenting the location and grading of the storage operation shall be submitted and shall be subject to the approval of the city engineer.
 - (8) A site plan documenting the location of the storage operation shall be submitted and shall be subject to the approval of the city fire chief.
 - (9) The storage area shall, at all times, be kept in a neat and orderly condition to ensure the health and safety of employees, visitors, and emergency services personnel.
- (c) Temporary transient produce stands/operations. Produce stands are structures for the display and sale of locally grown agricultural products. All produce stands shall be required to obtain a temporary permit, the cost of which shall be set by resolution. The zoning administrator shall have the authority to issue the permit to operations located in "B" business districts, provided the produce stand conforms to the following criteria:
- (1) Such structures shall not exceed 250 square feet in floor area and shall have no space for customers within the structure.
 - (2) Structures shall be located so as to provide safe ingress and egress from public roads.
 - (3) Each stand will be permitted no more than two signs, one flat wall sign not to exceed 16 square feet, and one freestanding sign not to exceed 32 square feet in area. All signs must be no closer than five feet to any property line.
 - (4) All stands and related structures shall be considered seasonal or temporary in nature and shall be removed at the end of the produce season consistent with the requirements and conditions of the stand's temporary permit, the date to be specified in the permit.
 - (5) All applications for permits must be accompanied by a site plan showing the proposed location of the stand, parking areas, entrances to property from adjacent routes and proposed sign locations.
 - (6) All such produce stands shall be operated in accordance with any conditions set forth in the permit, as well as all applicable state or local health regulations.
 - (7) Written consent of property owner must accompany permit application.
 - (8) Produce stands shall not be allowed on public property.
 - (9) Violation of any of these regulations, or other conditions of the permit, shall constitute cause for immediate revocation of the permit, and removal of the structure per conditions set forth herein.
 - (10) In the event a structure used as a produce stand is not removed by the end of the produce season, per the date specified in the permit, the structure may be removed at the direction of the zoning administrator, after seven days' notice to the landowner. The expenses of such removal shall be the responsibility of the landowner.

(Code 1985, § 11.17(15))

Sec. 50-367. Sewage disposal.

- (a) Once available, all property, other than existing single-family dwellings, which are developed and utilizing on-site sewage disposal systems shall be connected to the public sanitary system within two years. The term "available" shall mean public sanitary sewer mains are installed where such utility is within 300 feet of the property in question. For existing single-family dwellings, connection shall be required within ten years when the property is served by an on-site sewage disposal system which has been certified as fully compliant with current regulations, and which remains in compliance. However, no new on-site sewage disposal systems shall be installed or reconstructed for any property when public sanitary sewer is available.

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- (b) The installation of on-site sewage treatment systems shall be in conformance with the provisions of the state uniform building code and shall only be permitted where sanitary sewer is not available.

(Code 1985, § 11.17(16))

Sec. 50-368. Waste material.

Waste material resulting from or used in industrial or commercial manufacturing, fabricating, servicing, processing or trimming shall not be washed into the public storm sewer system nor the sanitary sewer system or any public water body but shall be disposed of in a manner approved by the state fire marshal, the pollution control agency, and the department of natural resources.

(Code 1985, § 11.17(17))

Sec. 50-369. Bulk storage (liquid).

- (a) All uses associated with the bulk storage (liquid) dispensing of all gasoline, liquid fertilizer, chemical, flammable and similar liquids shall comply with the requirements of the state fire marshal, department of agriculture offices, pollution control agency and have documents from those offices stating the use is in compliance and also in conformance with each of the following:
- (1) That the bulk storage/dispensing of fuel shall be required to meet each of the following requirements, and shall be installed only in those districts which specifically allow the use:
 - a. That the use is an accessory use to a permitted or conditional principal use in that district for which it is located and subject to all applicable zoning district requirements.
 - b. That the provisions of section 50-696 are considered satisfactorily met.
 - c. That any pollution or damage caused by the tank is the responsibility of the property owner on which the tank is located.
 - d. Lightning protection. Each tank shall be protected against natural lightning strikes in conformance with the city's adopted electrical code.
 - e. Compliance with electrical code. Storage tanks, electrical equipment and connections shall be designed and installed in adherence to the city's adopted electrical code.
 - f. A site plan documenting the location and grading of the storage operation shall be submitted and shall be subject to the approval of the city engineer.
 - (2) The below ground storage of fuel as an accessory use shall be prohibited in all districts except may be allowed by conditional use permit in the B-3, B-4, B-5, BC, I-1, I-2, and I-4 districts, provided that all requirements as outlined in subsection (a)(1) of this section are complied with.
 - (3) The aboveground storage/dispensing of fuel facilities shall be prohibited in all districts except in the A-1 district by conditional use and limited to one tank per property, provided each of the following criteria are met:
 - a. That all requirements as outlined in subsection (1) of this section are complied with.
 - b. That the use is only for vehicles associated with the principal use and shall not be used for commercial retail sales.
 - c. That the use shall be setback from all property lines in compliance with the district provisions for which it is located in and that the area is not within a required front or required side yard.

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- d. That the use shall not be located closer than 250 feet from a residentially used property.
 - e. That the area shall be improved with containment and spillage control as required by the fire chief and any applicable laws.
 - f. All lighting shall be hooded and so directed that the light source shall not be visible from the public right-of-way or from neighboring properties and shall be in compliance with section 50-360.
 - g. The storage area does not encroach upon required parking space.
 - h. That the storage areas shall be totally fenced, fully screened and landscaped according to a plan approved by the zoning administrator.

(b) Farm operations as defined in this chapter are exempt from the provisions of this section.

(Code 1985, § 11.17(18))

Sec. 50-370. Radiation emission.

All activities that emit radioactivity shall comply with the minimum requirements of the state pollution control agency.

(Code 1985, § 11.17(19))

Sec. 50-371. Electrical emission.

All activities which create electrical emissions shall comply with the minimum requirements of the Federal Communications Commission.

(Code 1985, § 11.17(20))

Sec. 50-372. Bus shelter and bus benches.

The erection or placement of bus shelters and covered bus benches in the public right-of-way shall require a permit from the zoning administrator. Such placements shall contain no advertising but may include a plaque with the name of the donor up to one-half of one square foot in area mounted on the structure.

(Code 1985, § 11.17(21))

Secs. 50-373—50-402. Reserved.

ARTICLE VII. NONCONFORMING, SPECIFIC AND INTERIM USES

DIVISION 1. GENERALLY

Sec. 50-403. Uses not provided for within zoning districts.

- (a) Whenever in any zoning district a use is neither specifically permitted or otherwise allowed, the use shall be considered prohibited. In such cases the council or the planning commission, on their own initiative or upon

request, may conduct a study to determine if the use is substantively similar to another use that is an allowed use. In such case, the council shall pass a resolution making a finding that the proposed use is to be considered as a listed allowed use, and the proposed use shall be regulated just as the listed use.

- (b) The council, planning commission or property owner, upon receipt of the staff study, may, if appropriate, initiate an amendment to this chapter to provide for the particular use under consideration or shall find that the use is not compatible for development within the city.

(Code 1985, § 11.01(7))

Sec. 50-404. Interim uses.

- (a) *Purpose and intent.* The purpose and intent of allowing interim uses is:

- (1) To allow a use for a brief period of time until a permanent location is obtained or while the permanent location is under construction.
- (2) To allow a use that is presently judged acceptable by the city council, but that with anticipated development or redevelopment, will not be acceptable in the future or will be replaced in the future by a permitted or conditional use allowed within the respective district.
- (3) To allow a use which is reflective of anticipated long-range change to an area and which is in compliance with their comprehensive plan provided that the use maintains harmony and compatibility with surrounding uses and is in keeping with the architectural character and design standards of existing uses and development.

- (b) *Procedure.*

- (1) *Existing uses.* Uses defined as interim uses which presently exist as a legal use or a legal nonconforming use within a respective zoning district shall be considered approved and shall be treated as allowed uses.
- (2) *New uses.* Uses defined as interim uses which do not presently exist within a respective zoning district shall be processed according to the standards and procedures for a conditional use permit as established by article XIII, division 3 of this chapter.
- (3) *City development contracts.* The city, an interim use applicant and the property owner shall, in addition to the procedures listed in subsections (b)(1) and (2) of this section, enter into a development contract specifying the date of, or conditions leading to, termination of the interim use.

- (c) *General standards.* An interim use shall comply with the following:

- (1) *Existing uses.* Shall be in conformance with zoning and building standards in effect at the time of initial construction and development and shall continue to be governed by such regulations in the future.
- (2) *New uses.*
 - a. Meets the standards of a conditional use permit set forth in section 50-699.
 - b. Conforms to the applicable performance standards of this chapter.
 - c. The use is allowed as an interim use in the respective zoning district.
 - d. The date or event that will terminate the use can be identified with certainty.
 - e. The use will not impose additional costs on the public if it is necessary for the public to take the property in the future.

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- f. The city council may impose additional limitations or requirements as it deems necessary to maintain compatibility and protect the health, safety and general welfare of the public.
 - g. The user agrees to any conditions that the city council deems appropriate for permission of the use.
 - (d) *Termination.* An interim use shall terminate on the happening of any of the following events, whichever first occurs:
 - (1) The date or occurrence of the termination event stated in the permit.
 - (2) Upon violation of conditions under which the permit was issued.
 - (3) Upon change in the city zoning regulations which renders the use nonconforming.
 - (4) The redevelopment of the use and property upon which it is located to a permitted or conditional use as allowed within the respective zoning district.
 - (e) *Vesting.* An interim use permit shall become a vested right to use the land according to the terms of the approved permit which shall run with the land only for the duration of the term identified in the permit. Such interim use permit shall not be utilized by subsequent occupants of the property, and no such use shall be allowed on the property unless the city council approves a new interim use permit.

(Code 1985, § 11.12)

Sec. 50-405. Nonconforming buildings, structures and uses.

- (a) *Purpose.* It is the purpose of this section to provide for the regulation of nonconforming buildings, structures and uses and to specify those requirements, circumstances and conditions under which nonconforming buildings, structures and uses will be operated and maintained. This article establishes separate districts, each of which is an appropriate area for the location of uses which are permitted in that district. It is necessary and consistent with the establishment of these districts that nonconforming buildings, structures and uses not be permitted to continue without restriction. Furthermore, it is the intent of this section that all nonconforming uses shall be eventually brought into conformity.
- (b) *Provisions.*
 - (1) Any nonconforming structure or use lawfully existing upon the effective date of the ordinance from which this section is derived, shall not be intensified, enlarged or reconstructed, but may be continued at the size and in the manner of operation and intensity existing upon such date except as hereinafter specified or subsequently amended.
 - (2) Any proposed structure which will, under this chapter, become nonconforming but for which a building permit has been lawfully granted prior to the effective date of the ordinance from which this section is derived may be completed in accordance with the approved plans; provided construction is started within 60 days of the effective date of the ordinance from which this section is derived, is not abandoned for a period of more than 120 days, and continues to completion within two years. Such structure and use shall thereafter be a legally nonconforming structure and use.
 - (3) Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless specifically allowed by this section. However, if either of the following conditions apply, any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. The council may, if specified in this section, permit an expansion or impose upon

nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety.

- a. The nonconformity or occupancy is discontinued for a period of more than one year; or
 - b. The nonconformity is destroyed by fire or other peril by more than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged. In this case, the council may impose reasonable conditions upon a zoning or building permit in order to mitigate any newly created impact on adjacent property or water body. When a nonconforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.
- (4) Alterations may be made to a building containing lawful nonconforming residential units when they will improve the livability thereof, provided they will not increase the number of dwelling units or size or volume of the building.
 - (5) Nonconforming, single-family dwelling units may be expanded to improve livability as a conditional use as regulated by article XIII, division 3 of this chapter, provided that the nonconformity is not increased.
 - (6) Nothing in this section shall prevent the reconstruction of a structure in safe condition when the structure is declared unsafe by the building official providing the repairs are made in a manner consistent with the requirements of this section.
 - (7) No nonconforming building, structure or use shall be moved to another lot or to any other part of the parcel of land upon which the same was constructed or was conducted on the effective date of the ordinance from which this section is derived, unless such movement shall bring the nonconformance into substantially closer compliance with the requirements of this chapter.
 - (8) When any lawful nonconforming use of any structure or land in any district has been changed to a conforming use, it shall not thereafter be changed to any nonconforming use.
 - (9) A lawful nonconforming use of a structure or parcel of land may be changed to lessen the nonconformity of use. Once a nonconforming structure or parcel of land has been changed, it shall not thereafter be so altered to increase the nonconformity.
 - (10) Nonconforming, non-income producing residential units may be expanded to improve livability as a conditional use permit, provided that the nonconformity of the structure will not be increased.
 - (11) Whenever a lawful nonconforming use of a structure or land is discontinued for a period of one year, any future use of the structure or land shall be made to conform with the provisions of this chapter.
 - (12) Nonconformities in floodplains shall be required to comply with regulations necessary to provide safe use and access, and the city shall enforce requirements to ensure the city's continued qualifications for enrollment in the National Flood Insurance Program.

(Code 1985, § 11.16)

Secs. 50-406—50-423. Reserved.

DIVISION 2. SPECIFIC USES

Sec. 50-424. Adult day care facilities.

- (a) *Purpose.* The regulation of adult day care facilities in these zoning regulations is to establish standards and procedures by which adult day care facilities can be conducted within the city to provide a program of services to functionally impaired adults, age 18 or older, for a period of less than 24 hours per day. Adult day care is intended to maintain and care for functionally impaired adults in the community and to prevent or delay institutionalization. This section establishes the city's minimum requirements for the establishment and operation of adult day care facilities which are not defined as permitted uses by state regulations or state statutes.
- (b) *Application.* Except for those facilities exempted in M.S.A. § 462.357, adult day care facilities shall be considered a conditional use within all residential and commercial zoning districts of the city and shall be subject to the regulations and requirements of article XIII, division 3 of this chapter. In addition to the city regulation, all adult day care facility operations shall comply with the minimum requirements of the state department of welfare regulations.
- (c) *Declaration of conditions.* The planning commission and the council may impose such conditions on the granting of an adult day care facility conditional use permit as may be necessary to carry out the purpose and provisions of this section.
- (d) *Site plan drawing necessary.* All applications for an adult day care facility conditional use permit shall be accompanied by a detailed site plan drawn to scale and dimensioned, displaying the information required by article XIII, division 3 of this chapter.
- (e) *General provisions.* Adult day care facilities shall be allowed as a principal or as an accessory use, provided that the adult day care facilities meet the applicable provisions of this section.
 - (1) *Lot requirements and setbacks.* The site and structure utilized for adult day care service, whether as a principal or accessory use shall meet all area and setback requirements of the respective zoning district in which the facility is to be located. For the purpose of parking, loading, outdoor recreation and adjoining property protection, the city shall have the right to increase lot area and setback requirements as may be deemed appropriate.
 - (2) *Sewer and water service.* All adult day care facilities shall be serviced by public sanitary sewer and water.
 - (3) *Screening.* Where the adult day care facility is in or abuts any commercial use or zoned property, the adult day care facility shall provide screening along the shared boundary of the two uses. All of the required fencing and screening shall comply with the fencing and screening requirements in sections 50-357 and 50-358. In all cases, the city shall have the right to require an adult day care facility, whether a principal or accessory use, to buffer and screen the site from adjoining uses.
 - (4) *Parking.*
 - a. There shall be adequate off-street parking which shall be located separately from any outdoor open area and shall be in compliance with article V, division 2 of this chapter. Parking areas shall be screened from view of surrounding and abutting residential uses in compliance with section 50-358.
 - b. When an adult day care facility is an accessory use within a structure containing another principal use, each use shall be calculated separately for determining the total off-street parking spaces required.
 - c. The council may exempt an adult day care facility from meeting the total parking requirement, specified by this chapter, where it is demonstrated that such use and demand will be less than

that required or where the facility provides pick-up and delivery service. In such cases, however, the city retains the right to require additional parking be constructed should demand warrant or to require a reduction of service provided.

- (5) *Loading.* One off-street loading space in compliance with article V, division 3 of this chapter or as specially approved by the council, shall be provided.
- (6) *Signage.* All signing and informational or visual communication devices shall be in compliance with section 50-7.
- (7) *Adult day care facility.* The building plans for the construction or alteration of a structure that shall be used as an adult day care facility shall be submitted to the city for review by the building official to ensure the structure is in compliance with the state building code and the state fire marshal's office to ensure the structure is in compliance with the state uniform fire code. All occupancy code, service and program, and safety requirements of state law and regulations shall apply. In addition, the facility shall meet the following conditions:
 - a. The architectural appearance and functional plan of the building and site shall not be so dissimilar to the existing buildings or area as to cause impairment of property values or constitute a blighting influence within a reasonable distance of the lot.
 - b. Internal and external site land use compatibility and sufficient peripheral area protections shall be provided as required by the council by the adult day care facility.
- (f) *Inspection.* At any and all reasonable hours, with or without notice, the city reserves the right, upon issuing any adult day care facility conditional use permit, to inspect the premises in which the occupation is being conducted to ensure compliance with the provisions of this section or any conditions additionally imposed.

(Code 1985, § 11.33)

Sec. 50-425. Adult uses.

- (a) *Purpose.* The nature of adult uses is such that they are recognized as having adverse secondary characteristics, particularly when they are accessible to minors and located near residential property or related residential uses such as schools, day care centers, libraries or parks. Furthermore, the concentration of adult uses has an adverse effect upon the use and enjoyment of adjacent areas. The nature of adult uses requires that they not be allowed within certain zoning districts, or within minimum distances from each other or residential uses. Special regulation of adult uses is necessary to ensure that the adverse secondary effects would not contribute or enhance criminal activity in the area of such uses nor will it contribute to the blighting or downgrading of the surrounding property and lessening of its value.
- (b) *General.* Adult uses as defined in section 50-3 shall be subject to the following general provisions:
 - (1) Activities classified as obscene as defined by M.S.A. § 617.241 are not permitted and are prohibited.
 - (2) Adult uses, either principal or accessory, shall be prohibited from locating in any building which is also utilized for residential purposes.
 - (3) Adult uses, either principal or accessory, shall be prohibited from locating in any place which is also used to dispense or consume alcoholic beverages.
 - (4) An adult use which does not qualify as an accessory use shall be classified as an adult use—principal.
- (c) *Adult uses—Principal.*

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- (1) Adult use—principal shall be located at least 500 radial feet, as measured in a straight line from the closest point of the property line of the building upon which the adult use—principal is located to the property line of a:
 - a. Residentially zoned property.
 - b. Licensed day care center.
 - c. Public or private education facility classified as an elementary, junior high or senior high.
 - d. Public library.
 - e. Public park.
 - f. Another adult use—principal.
 - g. On-sale liquor establishment.
 - (2) Adult use-principal shall be located at least 500 radial feet as measured from one another.
 - (3) Adult use-principal activities, as defined by this chapter, shall be classified as one use. No two adult use—principal activities shall be located in the same building or upon the same property and each use shall be subject to subsections (b)(2) and (3) of this section.
 - (4) Adult use-principal shall adhere to the following signing regulations:
 - a. Sign messages shall be generic in nature and shall only identify the type of business which is being conducted;
 - b. Shall not contain material classified as advertising; and
 - c. Shall comply with the requirements of size and number for the district in which they are located.
 - (5) Adult use—principal activities shall be prohibited at any public show, movie, caravan, circus, carnival, theatrical, or other performance or exhibition presented to the general public where minors are permitted.
- (d) *Adult uses—Accessory.*
- (1) Adult use—accessory shall:
 - a. Comprise no more than ten percent of the floor area of the establishment in which it is located.
 - b. Comprise no more than 20 percent of the gross receipts of the entire business operation.
 - c. Not involve or include any activity except the sale or rental of merchandise.
 - (2) Adult use—accessory shall be restricted from and prohibit access to minors by the physical separation of such items from areas of general public access:
 - a. Movie rentals. Display areas shall be restricted from general view and shall be located within a separate room, the access of which is in clear view and under the control of the persons responsible for the operation.
 - b. Magazines. Publications classified or qualifying as adult uses shall not be accessible to minors and shall be covered with a wrapper or other means to prevent display of any material other than the publication title.
 - c. Other use. Adult uses—accessory not specifically cited shall comply with the intent of this section subject to the approval of the zoning administrator.
 - (3) Adult use—accessory shall be prohibited from both internal and external advertising and signing of adult materials and products.

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- (4) Adult use—accessory activities shall be prohibited at any public show, movie, caravan, circus, carnival, theatrical or other performance or exhibition presented to the general public where minors are permitted.

(Code 1985, § 11.34)

Sec. 50-426. Day care nursery facilities.

- (a) *Purpose.* The regulation of day care nursery facilities in these zoning regulations is to establish standards and procedures by which day care facilities can be conducted within the city without jeopardizing the health, safety and general welfare of the day care participants or the surrounding neighborhood. This section establishes the city's minimum requirements for the establishment of a day care facility which are not defined as permitted uses by state statute or which are operated in uses other than single-family homes. Day care facilities other than those designated permitted uses by state law which operate in a single-family dwelling as an accessory use shall be subject to section 50-427 and processed as a home occupation.
- (b) *Application.* Day care nursery facilities serving 12 or fewer persons shall be permitted uses in single-family residential zones; day care facilities serving 13 to 16 persons shall be permitted uses in multifamily residential zones; and day care nursery facilities shall be considered a conditional use within all other zoning districts and shall be subject to the regulations and requirements of article XIII, division 3 of this chapter. In addition to the city regulations, all day care facility operations shall comply with the minimum requirements of Minn. R. ch. 9502. Daycare facilities located in residential zones may also be conditioned by the city using a conditional use permit in accordance with M.S.A. § 462.357.
- (c) *Declaration of conditions.* The planning commission and council may impose such conditions on the granting of a day care facility conditional use permit as may be necessary to carry out the purpose and provisions of this section.
- (d) *Site plan drawing necessary.* All applications for a day care facility conditional use permit shall be accompanied by a site plan drawn to scale and dimensioned, displaying the information required by article XIII, division 3 of this chapter.
- (e) *General provisions.* Day care facilities shall be allowed as a principal or as an accessory use, provided that the day care facilities meet all the applicable provisions of this section.
- (1) *Lot requirements and setbacks; principal use.* The proposed site for a day care facility as a principal use shall have a minimum lot area of one acre and a minimum lot width of 100 feet. The day care facility shall meet the setback requirements of the respective zoning district.
- (2) *Lot requirements and setbacks; accessory use.* The site of the proposed day care facility as an accessory use shall meet all area and setback provisions of the respective zoning district in which the facility is to be located.
- (3) *Sewer and water.* All day care facilities shall have access to municipal sewer and water or have adequate private sewer and water to protect the health and safety of all persons who occupy the facility.
- (4) *Screening.* Where the day care facility is in or abuts any commercial or industrial use or zoned property, the day care facility shall provide screening along the shared boundary of the two uses. All of the required fencing and screening shall comply with the fencing and screening requirements of sections 50-357 and 50-358.
- (5) *Parking.*

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- a. There shall be adequate off-street parking which shall be located separately from any outdoor play area and shall be in compliance with article V, division 2 of this chapter. Parking areas shall be screened from view of surrounding and abutting residential uses in compliance with section 50-358.
 - b. When a day care facility is an accessory use within a structure containing another principal use, each use shall be calculated separately for determining the total off-street parking spaces required.
- (6) *Loading.* One off-street parking space in compliance with article V, division 3 of this chapter shall be provided.
- (7) *Signage.* All signing and informational or visual communication devices shall be in compliance with the provisions of chapter 34.
- (8) *Day care facility.* The building plans for the construction or alteration of a structure that shall be used as a day care facility shall be submitted to the city for review by the building official to ensure the structure is in compliance with the state building code. The facility shall meet the following conditions:
- a. The architectural appearance and functional plan of the building and site shall not be so dissimilar to the existing buildings or area as to cause impairment of property values or constituting a blighting influence within a reasonable distance of the lot.
 - b. When the day care facility is an accessory use within a building, other than a single-family dwelling, it shall be located in a portion of the building separated from the other uses located within the structure.
 - c. An accessory use day care facility shall be adequately soundproofed to remove extraneous noise that would interfere with the day care operation and would affect the health, safety and welfare of the day care participants.
 - d. Internal and external site land use compatibility and sufficient peripheral area protections shall be provided by the day care facility.
 - e. All day care facilities, whether principal or accessory uses, shall be licensed under the terms of Minn. R. ch. 9502 and shall comply with the terms of such licensure, in addition to these zoning regulations, and shall be able to provide evidence of current licensure in order to protect public health, safety, and welfare.
 - f. *Inspection.* At any and all reasonable hours, with or without notice, the city reserves the right upon issuing any day care facility conditional use permit to inspect the premises in which the occupation is being conducted to ensure compliance with the provisions of this section or any conditions additionally imposed.

(Code 1985, § 11.23)

Sec. 50-427. Home occupations.

- (a) *Purpose.* The purpose of this section is to prevent competition with business districts and to provide a means through the establishment of specific standards and procedures by which home occupations can be conducted in residential neighborhoods without jeopardizing the health, safety and general welfare of the surrounding neighborhood. In addition, this section is intended to provide a mechanism enabling the distinction between permitted home occupations and special or customarily "more sensitive" home occupations, so that permitted home occupations may be allowed through an administrative process rather than a legislative hearing process.

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- (b) *Application.* Subject to the nonconforming use provision of this section, all occupations conducted in the home shall comply with the provisions of this section. This section shall not be construed, however, to apply to home occupations accessory to farming.
- (c) *Procedures and permits.*
- (1) *Permitted home occupation.* A permitted home occupation is a business which is conducted in the principal residential dwelling by a resident of the dwelling. The intent of this section is to ensure that such business activities have no noticeable impact on the residential character of the surrounding neighborhood. No permit shall be necessary to conduct a permitted home occupation in a zoning district in which it is allowed. If the business activity occurs at such a level that it is observable to the neighborhood, the resident shall be required to terminate the business, or seek approval of a special home occupation permit.
 - (2) *Special home occupation.* Any home occupation which does not meet the specific requirements for a permitted home occupation as defined in this section shall require a special home occupation permit which shall be applied for, reviewed and disposed of in accordance with the provisions of section 50-404 as an interim use permit.
 - (3) *Declaration of conditions.* The planning commission and the council may impose such conditions of the granting of a special home occupation permit as may be necessary to carry out the purpose and provisions of this section.
 - (4) *Effect of permit.* A special home occupation permit may be issued for a period of one year after which the permit may be reissued for periods of up to three years each. Each application for permit renewal shall, however, be processed in accordance with the procedural requirements of the initial special home occupation permit.
 - (5) *Transferability.* Permits shall not run with the land and shall not be transferable.
 - (6) *Lapse of special home occupation permit by non-use.* Whenever within one year after granting a permit, the use as permitted by the permit shall not have been initiated, then such permit shall become null and void unless a petition for extension of time in which to complete the work has been granted by the council. Such extension shall be requested in writing and filed with the zoning administrator at least 30 days before the expiration of the original permit. There shall be no charge for the filing of such petition. The request for extension shall state facts showing a good faith attempt to initiate the use. Such petition shall be presented to the planning commission for a recommendation and to the council for a decision. Whenever a special home occupation ceases operation for at least one year, the interim use permit issued for such special home occupation shall be terminated. Any further operation of the special home occupation shall require application for a new special home occupation permit according to the terms and requirements of this section.
 - (7) *Reconsideration.* Whenever an application for a permit has been considered and denied by the council, a similar application for a permit affecting substantially the same property shall not be considered again by the planning commission or council for at least six months from the date of its denial unless a decision to reconsider such matter is made by not less than four-fifths vote of the full council.
 - (8) *Renewal of permits.* An applicant shall not have a vested right to a permit renewal by reason of having obtained a previous permit. In applying for and accepting a permit, the permit holder agrees that his monetary investment in the home occupation will be fully amortized over the life of the permit and that a permit renewal will not be needed to amortize the investment. Each application for the renewal of a permit will be reviewed without taking into consideration that a previous permit has been granted. The previous granting or renewal of a permit shall not constitute a precedent or basis for the renewal of a permit.

(d) *Requirement; general provisions.* All home occupations shall comply with the following general provisions and according to definition, the applicable requirement provisions:

(1) *General provisions.*

- a. No home occupation shall produce light glare, noise, odor or vibration that will in any way have an objectionable effect upon adjacent or nearby property.
- b. No equipment shall be used in the home occupation which will create electrical interference to surrounding properties.
- c. Any home occupation shall be clearly incidental and secondary to the residential use of the premises, should not change the residential character thereof, and shall result in no incompatibility or disturbance to the surrounding residential uses.
- d. No home occupation shall require internal or external alterations or involve construction features not customarily found in dwellings except where required to comply with local and state fire and police recommendations.
- e. There shall be no exterior storage of equipment or materials used in the home occupation, except personal automobiles used in the home occupation may be parked on the site.
- f. The home occupation shall meet all applicable fire and building codes.
- g. There shall be no exterior display or exterior signs or interior display or interior signs which are visible from outside the dwelling with the exception signs commonly allowed on property in the zoning district.
- h. All home occupations shall comply with the provisions of this Code.
- i. No home occupation shall be conducted in such a way that between the hours of 10:00 p.m. and 7:00 a.m. the business would require any on-street parking.

(2) *Requirements; permitted home occupations.*

- a. No person other than those who customarily reside on the premises shall be employed.
- b. All permitted home occupations shall be conducted entirely within the principal building and may not be conducted in accessory building.
- c. Permitted home occupations shall not create a parking demand in excess of that which can be accommodated in an existing driveway, where no vehicle is parked closer than 15 feet from the curbline or edge of paved surface.
- d. Permitted home occupations include, and are limited to:
 1. Art studios.
 2. Dressmakings.
 3. Secretarial services.
 4. Family day cares.
 5. Foster cares.
 6. Professional offices and teaching with musical, dancing and other instructions which consist of no more than one pupil at a time and similar uses.
- e. The home occupation shall not involve any of the following: repair service or manufacturing which requires equipment other than found in a dwelling; teaching which customarily consists of more than one pupil at a time; over-the-counter sale of merchandise produced off the premises,

except for those brand name products that are not marketed and sold in a wholesale or retail outlet, or any retail sales that involves the customer coming to the place of business.

(3) *Requirements; special home occupations.*

- a. No person other than a resident shall conduct the home occupation, except where the applicant can satisfactorily prove unusual or unique conditions or need for non-resident assistance of no more than one such employee, and that this exception would not compromise the intent of this section.
- b. Examples of special home occupations include barber and beauty services, day care-group nursery for children in numbers exceeding the allowances of M.S.A. § 462.357, photography studio, group lessons, small appliances and small engine repair and the like.
- c. The home occupation may involve any of the following: stock-in-trade incidental to the performance of the service, repair service or manufacturing which requires equipment other than customarily found in a home, the teaching with musical, dancing and other instruction of more than one pupil at a time, but not to exceed four pupils at any one time.
- d. Special home occupations shall not be allowed to accommodate their parking demand through utilization of on-street parking.
- e. Inspection. The city reserves the right to inspect the premises in which a home occupation is being conducted to ensure compliance with the provisions of this section or any conditions additionally imposed.

(Code 1985, § 11.22)

Sec. 50-428. Model homes.

- (a) *Purpose.* The purpose of this section is to provide for the erection of model homes in new subdivisions without adversely affecting the character of surrounding residential neighborhoods or creating a general nuisance. As model homes represent a unique temporary commercial use, special consideration must be given to the peculiar problems associated with them and special standards must be applied to insure reasonable compatibility with their surrounding environment.
- (b) *Procedure.* The erection of a model homes shall require approval of the council.
- (c) *Special requirements.*
 - (1) Temporary parking facilities equal to four spaces per model home dwelling unit shall be provided. The overall design, drainage, and surfacing of the temporary parking facility shall be subject to the approval of the city engineer.
 - (2) Access from a temporary parking facility onto a local, residential street shall be discouraged. When this requirement is physically impracticable, access shall be directed away from residential neighborhoods to the greatest extent possible.
 - (3) No model home shall incorporate outside lighting which creates a nuisance due to glare or intensity, as provided for in section 50-360.
 - (4) All model home signage shall comply with the sign regulations as contained in the provisions of chapter 34.
 - (5) All criteria for conditional use consideration but not procedural requirements as contained in section 50-699 shall be considered and satisfactorily met.

(Code 1985, § 11.29)

Secs. 50-429—50-454. Reserved.

ARTICLE VIII. ESSENTIAL SERVICES

Sec. 50-455. Purpose.

The purpose of this section is to provide for the installation of essential services such as telephone lines, pipelines, electric transmission lines and substations in such a manner that the health, safety and welfare of the city will not be adversely affected. Essential services should also be installed in cognizance of existing and projected demands for such services.

(Code 1985, § 11.28(1))

Sec. 50-456. Permit required.

All underground telephone lines, pipelines for local distribution, underground electric transmission lines, and overhead electric transmission lines and substations less than 33 KV, when installed in any public right-of-way in any zoning district, shall require a special permit approved by the city engineer.

(Code 1985, § 11.28(2))

Sec. 50-457. Permit approval.

All underground telephone lines, pipelines for local distribution, underground transmission lines, and overhead electric transmission lines less than 33 KV, which are intended to serve more than one parcel and are proposed to be installed at locations other than in public right-of-way, shall require a special permit issued by the city after approval by the city engineer. Approval by the city engineer shall be based upon the information furnished in the following procedural requirements:

- (1) Prior to the installation of any of the previous essential services, the owner of such service shall file with the zoning administrator, all maps and other pertinent information as deemed necessary for the city engineer to review the proposed project.
- (2) The zoning administrator shall transmit the map and accompanying information to the city engineer for his review and approval regarding the project's relationship to the comprehensive plan and parts thereof or provisions of this Code.
- (3) The city engineer shall report in writing to the zoning administrator his finding as to the compliance of the proposed project with the comprehensive plan and this Code.
- (4) In considering applications for the placement of essential services, as regulated in this section, the city staff shall consider the effect of the proposed project upon the health, safety and general welfare of the city, as existing and as anticipated; and the effect of the proposed project upon the comprehensive plan.
- (5) Upon receiving the approval of the city engineer, the zoning administrator shall issue a special permit for the installation and operation of the applicant's essential services. If the engineer's report recommends the denial of the permit causing the zoning administrator to deny its issuance, the applicant may appeal the decision to the board of appeals and adjustments under the rules and procedures as set forth in section 50-633.

(Code 1985, § 11.28(3))

Sec. 50-458. Conditional use.

All transmission pipelines (i.e., pipe-lines not required for local distributing network), and overhead transmission and substation lines in excess of 33 KV shall be a conditional use in all districts subject to the following procedural requirements:

- (1) Prior to the installation of any of the previous essential services, the owner of such service shall file with the zoning administrator, all maps and other pertinent information as deemed necessary for the planning commission to review the proposed project.
- (2) The zoning administrator shall transmit the map and accompanying information to the planning commission for its review and recommendations regarding the project's relationship to the comprehensive plan and parts thereof.
- (3) The planning commission shall hold the necessary public hearings as prescribed by this chapter for conditional uses.
- (4) The planning commission shall report in writing to the council its findings as to compliance of the proposed project with the comprehensive plan.
- (5) In considering the applications for the placement of essential services, as regulated by this section, the council shall consider the advice and recommendations of the planning commission and the effect of the proposed project upon the health, safety and general welfare of the city, existing and anticipated; and the effect of the proposed project upon the comprehensive plan.

(Code 1985, § 11.28(4))

Secs. 50-459—50-484. Reserved.

ARTICLE IX. SOLAR AND WIND SYSTEMS

Sec. 50-485. Solar energy systems.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Building-integrated solar energy system means a solar energy system that is directly incorporated into the building by replacing typical building materials.

Ground-mounted solar energy system means a solar energy system that is installed onto the ground directly or by means of brackets or poles.

Roof-mounted solar energy system means a solar energy system mounted to a house or other building.

Solar energy system means a set of devices whose primary purpose is to provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation or water heating.

Solar thermal system means a system that includes a solar collector and a heat exchanger that heats or preheats water for building heating systems or other hot water needs of the building.

- (b) *Permitted accessory use.* Solar energy systems are allowable as an accessory use in all zoning districts, subject to the following requirements:

(1) *Standards.*

- a. *Height.* Roof-mounted solar energy systems shall not project beyond the peak of the roof and shall not be more than three feet above the roof surface to which they are attached. Ground-mounted solar energy systems shall not exceed 15 feet in height.
- b. *Location.* Ground-mounted solar energy systems must be located in the rear yard only.
- c. *Setbacks.* Ground mounted solar energy systems shall be meet minimum building setback from all property lines as defined for that property's zoning classification, a minimum of ten feet from all buildings located on adjacent lots, and a minimum of ten feet from all utility easements. Roof-mounted solar energy systems shall comply with all building setbacks in the applicable zoning district and shall not extend beyond the exterior perimeter of the building on which the system is mounted.
- d. *Coverage.* Roof-mounted solar energy systems shall not cover more than 80 percent of the total area of the roof. Solar energy systems must have three feet of clearance around all roof plane edges and 18 inches along all ridge lines, provided no less than a total of three feet of width on both sides of the ridge is available to facilitate emergency responder access.
- e. *Feeder lines.* All power exterior electrical or other service lines must be buried below the surface of the ground.
- f. *Exemption.* Building integrated solar energy systems are exempt from the requirements of this section and shall be regulated as any other building element.
- g. *Color.* Solar thermal piping shall match roof or solar collector color.
- h. *Shoreland district.* For lots subject to the shoreland district, requirements for solar energy systems are as follows:
 - 1. Solar energy systems are not allowed within the required shoreland setback if not on a building;
 - 2. One panel on boat lifts no greater than two square feet in size shall be a permitted use.

(2) *Safety.*

- a. *Compliance with building code.* All solar energy systems shall comply with the state building code and any local building code requirements.
- b. *Compliance with electrical code.* All solar energy systems shall comply with the city's adopted electrical code.
- c. *Compliance with plumbing code.* All solar thermal systems shall comply with the state plumbing code.
- d. *Certifications.* Solar energy system components shall be certified by Underwriters Laboratories, Inc. and the Solar Rating and Certification Corporation. The city reserves the right to deny a building permit for proposed solar energy systems deemed to have inadequate certification.

(3) *Approval.*

- a. *Permits.* The erection, alteration, improvement, reconstruction, and movement of a solar energy system requires a building permit from the city.
- b. *Utility notification.* The owner of a solar energy system that will physically connect to a house or other building's electrical system or the electric utility grid must enter into a signed interconnection agreement with the utility prior to the issuance of a building permit.

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- (4) *Abandonment.* If the solar energy system remains nonfunctional or inoperative for more than 12 consecutive months, the system shall constitute a public nuisance. The owner shall obtain a demolition permit and remove the abandoned system at their expense. Removal includes the entire structure, including collector, mount, and transmission equipment.

(Ord. of 9-16-2019 , § 1(11.36); Ord. No. 2020-3 , 12-21-2020)

Sec. 50-486. Wind energy conversion systems (WECS).

- (a) *Purpose.* The purpose of this section is to establish standards and procedures by which the installation and operation of WECS shall be governed within the city.
- (b) *Application.* Wind energy conversion systems may be allowed as a conditional use within any zoning district of the city, subject to the regulations and requirements of this section, provided the property upon which the system is to be located is zoned agricultural, commercial or industrial or is constructed and maintained on any parcel of land of at least 2.5 acres in size, and the WECS shall be no less than 1,000 feet from any residential use.
- (c) *Declaration of conditions.* The planning commission may recommend and the council may impose such conditions on the granting of WECS conditional use permit as may be necessary to carry out the purpose and provisions of this section.
- (d) *Site plan drawing.* All applications for WECS conditional use permit shall be accompanied by a detailed site plan drawn to scale and dimensioned, displaying the following information:
- (1) Lot lines and dimensions.
 - (2) Location and height of all buildings, structures, aboveground utilities and trees on the lot, including both existing and proposed structures and guy wire anchors.
 - (3) Locations and height of all adjacent buildings, structures, aboveground utilities and trees located within 350 feet of the exterior boundaries of the property in question.
 - (4) Existing and proposed setbacks of all structures located on the property in question.
 - (5) Sketch elevation of the premises accurately depicting the proposed WECS and its relationship to structures on adjacent lots.
- (e) *Compliance with state building code.* Standard drawings of the structural components of the wind energy conversion system and support structures, including base and footings shall be provided along with engineering data and calculations to demonstrate compliance with the structural design provisions of the state building code. Drawings and engineering calculations shall be certified by a registered engineer.
- (f) *Compliance with electrical code.* WECS electrical equipment and connections shall be designed and installed in adherence to the city's adopted electrical code.
- (g) *Manufacturer warranty.* Applicant shall provide documentation or other evidence from the dealer or manufacturer that the WECS has been successfully operated in atmospheric conditions similar to the conditions within the city. The WECS shall be warranted against any system failures reasonably expected in severe weather operation conditions.
- (h) *Design standards.*
- (1) *Height.* The permitted maximum height of a WECS shall be determined in one of two ways. In determining the height of the WECS, the total height of the system shall be included. System height shall be measured from the base of the tower to the highest possible extension of the rotor.

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- a. A ratio of one foot to one foot between the distance of the closest property line to the base of the WECS to the height of the system.
 - b. A maximum system height of 175 feet.
 - c. The shortest height of the two mentioned methods in subsections (h)(1)a and b of this section shall be used in determining the maximum allowable height of a WECS system. The height of a WECS must also comply with 14 CFR 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace) or Minn. R. 8800.1200 (criteria for determining obstruction to air navigation).
- (2) *Setbacks.* No part of a WECS (including guy wire anchors) shall be located within or above any required front, side or rear yard setback. WECS towers shall be setback from the closest property line one foot for every one foot of system height. WECS shall not be located within 30 feet of an above ground utility line.
- (3) *Rotor size.* All WECS rotors shall not have rotor diameters greater than 26 feet.
- (4) *Rotor clearance.* Blade-arcs created by the WECS shall have a minimum of 30 feet of clearance over any structure or tree within a 200-foot radius.
- (5) *Rotor safety.* Each WECS shall be equipped with both a manual and automatic braking device capable of stopping the WECS operation in high winds (40 miles per hour or greater).
- (6) *Lightning protection.* Each WECS shall be grounded to protect against natural lightning strikes in conformance with the city's adopted electrical code.
- (7) *Tower access.* To prevent unauthorized climbing, WECS towers must comply with one of the following provisions:
- a. Tower climbing apparatus shall not be located within 12 feet of the ground.
 - b. A locked anti-climb device shall be installed on the tower.
 - c. Tower capable of being climbed shall be enclosed by a locked, protective fence at least six feet high.
- (8) *Signs.* WECS shall have one sign, not to exceed two square feet posted at the base of the tower and the sign shall contain the following information:
- a. Warning high voltage.
 - b. Manufacturer's name.
 - c. Emergency telephone number.
 - d. Emergency shutdown procedures.
- (9) *Lighting.* WECS shall not have affixed or attached any lights, reflectors, flashers or any other illumination, except for illumination devices required by 14 CFR 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace) and FAA Advisory Circular AAC 70/7460-1M, November 16, 2020 (Obstruction Marking and Lighting).
- (10) *Electromagnetic interference.* WECS shall be designed and constructed so as not to cause radio and television interference.
- (11) *Noise emissions.* Noises emanating from the operation of WECS shall be in compliance with and regulated by Minn. R. ch. 7030 (Noise Pollution Control.)
- (12) *Utility company interconnection.* No WECS shall be interconnected with a local electrical utility company until the utility company has reviewed and commented upon it. The interconnection of the WECS with the utility company shall adhere to the city's adopted electrical code.

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- (i) *Ornamental wind devices.* Ornamental wind devices that are not a WECS shall be exempt from the provisions of this section and shall conform to other applicable provisions of this chapter.
 - (j) *Inspection.* The city reserves the right upon issuing any WECS conditional use permit to inspect the premises on which the WECS is located. If a WECS is not maintained in operational condition and poses a potential safety hazard, the owner shall take expeditious action to correct the situation.
 - (k) *Abandonment.* Any WECS or tower which is not used for six successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner.

(Code 1985, § 11.31)

Secs. 50-487—50-510. Reserved.

ARTICLE X. COMMUNICATIONS RECEPTION AND TRANSMISSION FACILITIES

Sec. 50-511. Communications reception and transmission devices.

- (a) *Purpose.* It is the purpose of this section to provide for and regulate communications reception/transmission devices in the city. Where this section refers to cellular telephone antennas, it shall also apply to other wireless service antennas.
- (b) *General standards.* The following standards shall apply to all cellular telephone, public utility, microwave, radio and television broadcast transmitting, radio and television receiving, satellite dish and short-wave radio transmitting and receiving antenna:
 - (1) All obsolete and unused antenna shall be removed within 12 months of cessation of operation at the site, unless an exemption is granted by the zoning administrator.
 - (2) All antenna shall be in compliance with all city building and electrical code requirements and as applicable shall require related permits.
 - (3) Structural design, mounting and installation of the antenna shall be in compliance with manufacturer's specifications and as may be necessary, as determined by the zoning administrator, shall be verified and approved by a professional engineer.
 - (4) When applicable, written authorization for antenna erection shall be provided by the property owner.
 - (5) No advertising message shall be affixed to the antenna structure.
 - (6) The height of the antenna shall be the minimum necessary to function satisfactorily, as verified by an electrical engineer or other appropriate professional.
 - (7) Antennas shall not be artificially illuminated unless required by law or by a governmental agency to protect the public's health and safety.
 - (8) When applicable, proposals to erect new antenna shall be accompanied by any required federal, state, or local agency licenses.
 - (9) If a new antenna support structure is to be constructed, it shall be designed so as to accommodate other users, including, but not limited to, other cellular communication companies, local police, fire and ambulance companies.
 - (10) Antenna support structures under 200 feet in height shall be painted silver or have a galvanized finish to reduce visual impact.

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- (11) Except as may be applicable in cases where a conditional use permit is required, antennas and support structures for federally licensed amateur radio stations and used in the amateur radio service are exempt from subsections (b)(3), (6) and (9) of this section, and must comply with subsection (c)(1) of this section.
- (12) Amateur radio support structures (towers) must be installed in accordance with the instructions furnished by the manufacturer of that tower model. Because of the experimental nature of the amateur radio service, antennas mounted on such a tower may be modified or changed at any time so long as the published allowable load on the tower is not exceeded and the structure of the tower remains in accordance with the manufacturer's specifications.
- (c) *Accessory and secondary use antennas.* The following standards shall apply to all accessory and secondary use antennas including radio and television receiving antennas, satellite dishes, TVROs two meters or less in diameter, short-wave radio dispatching antennas, or those necessary for the operation of electronic equipment including radio receivers, federally licensed amateur radio stations and television receivers:
- (1) Accessory or secondary use antennas shall not be erected in any required yard (except a rear yard) or within public or private utility and drainage easements and shall be set back a minimum of three feet from all lot lines.
 - (2) Guy wires or guy wire anchors shall not be erected within public or private utility and drainage easements and shall be set back a minimum of one foot from all lot lines.
 - (3) Accessory or secondary use antennas and necessary support structures, monopoles or towers may extend a maximum of 15 feet above the normal height restriction for the affected zoning district, except support structures and antennas used in the amateur radio service may extend a maximum of two times the normal height restriction for the affected zoning district.
 - (4) The installation of more than one support structure per property shall require the approval of a conditional use permit.
- (d) *Cellular telephone antennas (and other wireless service antennas).*
- (1) *Residential district standards.*
 - a. *Antennas located upon public structures.* Cellular telephone antennas located upon public structures shall require the processing of an administrative permit and shall comply with the following standards:
 1. The applicant shall demonstrate by providing a coverage/interference analysis and capacity analysis prepared by a professional engineer that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district.
 2. Transmitting, receiving and switching equipment shall be housed within an existing structure whenever possible. If a new equipment building is necessary for transmitting, receiving and switching equipment, it shall be situated in the rear yard of the principal use and shall be screened from view by landscaping where appropriate.
 3. An administrative permit is issued in compliance with the procedures established by the city council.
 - b. *Antennas not located upon a public structure.* Cellular telephone antennas not located upon a public structure shall require the processing of a conditional use permit and shall comply with the following standards:

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1. The applicant shall demonstrate by providing a coverage/interference analysis and capacity analysis prepared by a professional engineer that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district.
 2. The antennas shall be located on an existing structure, if possible, and shall not extend more than 15 feet above the structural height of the structure to which they are attached.
 3. If no existing structure which meets the height requirements for the antennas is available for mounting purposes, the antennas may be mounted on a single ground mounted pole, provided that:
 - (i) The pole shall not exceed 75 feet in height.
 - (ii) The setback of the pole from the nearest residential structure is not less than the height of the antenna. Exceptions to such setback may be granted if a qualified structural engineer specifies in writing that any collapse of the pole will occur within a lesser distance under all foreseeable circumstances.
 4. Transmitting, receiving and switching equipment shall be housed within an existing structure whenever possible. If a new equipment building is necessary for transmitting, receiving and switching equipment, it shall be situated in the rear yard of the principal use and shall be screened from view by landscaping where appropriate.
 5. Unless the antenna is mounted on an existing structure, at the discretion of the city, a security fence not greater than eight feet in height with a maximum opacity of 50 percent shall be provided around the support structure.
 6. The conditional use permit provisions of article XIII, division 3 of this chapter are considered and determined to be satisfied.

(2) *Business district standards.*

- a. *Antennas located upon a public structure.* Cellular telephone antennas located upon a public structure shall comply with the following standards:
 1. Transmitting, receiving and switching equipment shall be housed within an existing structure whenever possible. If a new equipment building is necessary for transmitting, receiving and switching equipment, it shall be situated in the rear yard of the principal use and shall be screened from view by landscaping where appropriate.
 2. An administrative permit is issued in compliance with the procedures established by the city council.
- b. *Antennas not located upon a public structure.* Cellular telephone antennas not located upon a public structure shall require the processing of a conditional use permit and shall comply with the following standards:
 1. The applicant shall demonstrate by providing a coverage/interference analysis and capacity analysis prepared by a professional engineer that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district.
 2. The antennas shall be located on an existing structure, if possible, and shall not extend more than 15 feet above the structural height of the structure to which they are attached.

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3. If no existing structure which meets the height requirements for the antennas is available for mounting purposes, the antennas may be mounted on a single ground mounted pole, provided that:
 - (i) The pole does not exceed 75 feet in height.
 - (ii) The setback of the pole from the nearest residential structure is not less than the height of the antenna. Exceptions to such setback may be granted if a qualified structural engineer specifies in writing that any collapse of the pole will occur within a lesser distance under all foreseeable circumstances.
 4. Transmitting, receiving and switching equipment shall be housed within an existing structure whenever possible. If a new equipment building is necessary for transmitting, receiving and switching equipment, it shall be situated in the rear yard of the principal use and shall be screened from view by landscaping where appropriate.
 5. Unless the antenna is mounted on an existing structure, at the discretion of the city, a security fence not greater than eight feet in height with a maximum opacity of 50 percent shall be provided around the support structure.
 6. The conditional use permit provisions of article XIII, division 3 of this chapter are considered and determined to be satisfied.

(3) *Industrial district standards.*

- a. *Antennas located upon a public structure.* Cellular telephone antennas located upon a public structure shall require the processing of an administrative permit and shall comply with the following standards: An administrative permit is issued in compliance with the procedures established by the city council.
- b. *Antennas not located upon a public structure.* Cellular telephone antennas not located upon a public structure shall require the processing of an administrative permit and shall comply with the following standards:
 1. The antennas shall be located upon a structure if possible.
 2. If no existing structure which meets the height requirements for mounting the antennas, the antennas may be mounted upon a supporting pole or tower not exceeding 150 feet in height. Such pole or tower shall be located on a parcel having a dimension equal to the height of the pole or tower measured between the base of the pole or tower located nearest the property line and the property line, unless a qualified structural engineer specifies in writing that the collapse of the pole or tower will occur within a lesser distance under all foreseeable circumstances.
 3. An administrative permit is issued in compliance with the procedures established by the city council.

(e) *Satellite dishes.*

- (1) *Residential district standards.* Single satellite dish TVROs greater than one meter in diameter may be allowed as a conditional use within the residential zoning districts of the city and shall comply with the following standards:
 - a. All accessory and secondary use provisions of this chapter are satisfactorily met.
 - b. The lot on which the satellite dish antenna is located shall be of sufficient size to assure that an obstruction-free receive window can be maintained within the limits of the property ownership.

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- c. Except where the antenna is screened by a structure exceeding the antenna height, landscape buffering and screening shall be maintained on all sides of the satellite dish antenna in a manner in which growth of the landscape elements will not interfere with the receive window.
 - d. The satellite dish antenna is not greater than three meters in diameter.
 - e. The conditional use permit provisions of article XIII, division 3 of this chapter are considered and determined to be satisfied.
- (2) *Business district standards.* Satellite dish antennas within the business zoning districts of the city shall be limited to those listed as permitted accessory and secondary uses in the applicable zoning district subject to the provisions of this chapter.
- (3) *Industrial district standards.* Commercial, private and public satellite dish transmitting or receiving antennas in excess of two meters may be allowed as a conditional use within the I-1, I-2, and I-4 districts of the city and shall comply with the following standards:
- a. All accessory and secondary use provisions of subsection (c)(3) of this section are satisfactorily met.
 - b. The lot on which the satellite dish antenna is located shall be of sufficient size to assure that an obstruction free transmit-receive window or windows can be maintained within the limits of the property ownership.
 - c. Except where the antenna is screened by a structure exceeding the antenna height, landscape buffering and screening shall be maintained on all sides of the satellite dish antenna in a manner in which growth of the landscape elements will not interfere with the transmit-receive window.
 - d. The conditional use permit provisions of article XIII, division 3 of this chapter are considered and determined to be satisfied.
- (f) *Commercial and public radio and television transmitting antennas, and public utility microwave antennas.* Commercial and public radio and television transmitting and public utility microwave antennas shall comply with the following standards:
- (1) Such antenna shall be considered an allowed conditional use within the I-1 Planned Industrial district of the city and shall be subject to the regulations and requirements of article XIII, division 3 of this chapter.
 - (2) The antennas, transmitting towers, or array of towers shall be located on a continuous parcel having a dimension equal to the height of the antenna, transmitting tower, or array of towers measured between the base of the antenna or tower located nearest a property line and the property line, unless a qualified structural engineer specifies in writing that the collapse of any antenna or tower will occur within a lesser distance under all foreseeable circumstances.
 - (3) Unless the antenna is mounted on an existing structure, at the discretion of the city, a fence not greater than eight feet in height with a maximum opacity of 50 percent shall be provided around the support structure and other equipment.

(Code 1985, § 11.32)

Secs. 50-512—50-530. Reserved.

ARTICLE XI. LAND EXCAVATION AND FILLING

DIVISION 1. GENERALLY

Secs. 50-531—50-553. Reserved.

DIVISION 2. EXCAVATIONS

Sec. 50-554. Land excavation.

- (a) *Permit required.* The extraction of sand, gravel, black dirt or other natural material from the land by a person in the amount of 75 cubic yards or more shall be termed land excavation and shall require a permit.
- (b) *Exceptions.* It is the intention of this division to cover the removal of natural materials from land, including such activity when carried on as a business but shall not apply to basement excavation or other excavation which is already covered by the building code or other such regulations of the city.
- (c) *Application for permit.*
 - (1) Any person desiring a permit hereunder shall present an application on such form as shall be provided by the zoning administrator requiring the following information:
 - a. The name and address of the applicant;
 - b. The name and address of the owner of the land;
 - c. The address and legal description of the land involved;
 - d. The purpose of the excavation;
 - e. A description of the type and amount of material to be excavated from the premises;
 - f. The highway, street or streets, or other public ways in the city upon and along which any material is to be hauled or carried;
 - g. An estimate of the time required to complete the excavation;
 - h. A site plan showing present topography and also including boundary lines for all properties, watercourses, wetlands and other significant features within 350 feet;
 - i. A site plan showing the proposed finished grade and landscape plan. Erosion control measures shall be provided on such plan. Final grade shall not adversely affect the surrounding land or the development of the site on which the excavation is being conducted. Topsoil shall be of a quality capable of establishing normal vegetative growth;
 - j. A security statement demonstrating the proposed activity will in no way jeopardize the public health, safety and welfare or is appropriately fenced to provide adequate protection;
 - k. A statement that the applicant will comply with all conditions prescribed by the city or its officers or agents.

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- (2) The application shall be considered as being officially submitted when all the information requirements are complied with. A fee for such application shall be paid to the city at the time the application is submitted in accordance with the fee schedule adopted by ordinance.
- (d) *Technical reports.* The zoning administrator shall immediately upon receipt of such application forward a copy thereof to the city engineer and building official. Where watersheds and shoreline are in question, other affected agencies shall also be contacted. These technical advisors shall be instructed by the zoning administrator to prepare reports for the council.
- (e) *Issuance of permit.* Upon receiving information and reports from the zoning administrator, building official and city engineer, the council shall make its determination as to whether, and when, and under what conditions such permit for an excavation is to be issued to the applicant by the zoning administrator.
- (f) *Conditions of permit.*
- (1) The council, as a prerequisite to the granting of a permit, or after a permit has been granted, may require the applicant to whom such permit is issued, or the owner or user of the property on which the excavation is located to:
- Properly fence the excavation;
 - Slope the banks, and otherwise properly guard and keep the excavation in such condition as not to be dangerous from caving or sliding banks;
 - Properly drain, fill in or level the excavation, after it has been created, so as to make the same safe and healthful as the council shall determine;
 - Keep the excavation within the limits for which the particular permit is granted; and
 - Remove excavated material from the excavation, away from the premises, upon and along such highways, streets or other public ways as the council shall order and direct.
- (2) Hours of operation. Unless extended by conditional use permit, the hours of operation shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.
- (g) *Bonding.* The council may require either the applicant or the owner or user of the property on which the excavation is occurring to post a bond in such form and sum as the council shall determine, with sufficient surety provided to the city, conditioned to pay to the city the extraordinary cost and expense of repairing, from time to time, any highways, streets or other public ways where such repair work is made necessary by the special burden resulting from hauling and travel in transporting excavated material, the amount of such cost and expense to be determined by the city engineer; and conditioned further to comply with all requirements of this chapter, and the particular permit, and to pay any expense the city may incur by reason of doing anything required to be done by any applicant to whom a permit is issued.
- (h) *Failure to comply.* The council may, for failure of any person to comply with any requirement made of him in writing under the provisions of such permit, as promptly as same can reasonably be done, proceed to cause the requirement to be complied with, and the cost of such work shall be taxed against the property whereon the landfill is located, or the city may, at its option, proceed to collect such costs by an action against the person to whom such permit has been issued, and his superiors if a bond exists.
- (i) *Completion of operation.*
- (1) All excavation operations shall be completed within 90 days of the issuance of the permit. Upon completion, the permit holder shall notify the building official in writing of the date of completion. If additional time beyond the 90 days is needed for completion, the permit holder may apply to the city and upon a satisfactory showing of need, the council may grant an extension of time. If such extension is granted, it shall be for a definite period and the building official shall issue an extension permit. Extensions shall not be granted in cases where the permit holder fails to show that good faith efforts

were made to complete the excavation operation within 90 days and that failure to complete the operation was due to circumstances beyond the permit holder's control, such as teamster's strike, unusually inclement weather, illness or other such valid and reasonable excuse for non-completion. In the event a request for an extension is denied, the permit holder shall be allowed a reasonable time to comply with the other provisions of this section relating to grading, leveling and seeding or sodding. What constitutes such "reasonable time" shall be determined by the city engineer after inspecting the premises.

- (2) At the completion of an excavation, the premises shall be graded, leveled, and seeded or sodded with grass. The grade shall be such elevation with reference to any abutting street or public way as the city engineer shall prescribe in the permit. The site shall also conform to such prerequisites as the city engineer may determine with reference to stormwater drainage runoff and stormwater passage or flowage so that the excavation cannot become a source of, or an aggravation to, stormwater drainage conditions in the area. The city engineer shall inspect the project following completion to determine if the applicant has complied with the conditions imposed as part of the permit.

(Code 1985, § 11.25)

Secs. 50-555—50-571. Reserved.

DIVISION 3. LANDFILLING

Sec. 50-572. Landfilling operations.

- (a) *Permit required.* Any person who proposes to add landfill in excess of 50 cubic yards to any property within the city limits, shall apply to the city for a landfill permit.
- (b) *Application and information.*
- (1) Any person desiring a permit hereunder shall present an application on such forms as shall be provided by the zoning administrator requiring the following information:
- a. The name and address of the applicant;
 - b. The name and address of the owner of the land;
 - c. The address and legal description of the land involved;
 - d. The purpose of the landfill;
 - e. A description of the source, type, and amount of fill material to be placed upon the premises;
 - f. The highway, street or streets, or other public ways in the city upon and along which any material is to be hauled or carried;
 - g. An estimate of the time required to complete the landfill;
 - h. A site plan showing present topography and also including boundary lines for all properties, watercourses, wetlands and other significant features within 350 feet;
 - i. A site plan showing the proposed finished grade and landscape plan. Erosion control measures shall be provided on such plan. Final grade shall not adversely affect the surrounding land or the development of the site on which the landfill is being conducted. Topsoil shall be of a quality capable of establishing normal vegetative growth;

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- j. A security statement demonstrating the proposed activity will in no way jeopardize the public health, safety and welfare or is appropriately fenced to provide adequate protection;
 - k. A statement that the applicant will comply with all conditions prescribed by the city or its officers or agents.
- (2) The application shall be considered as being officially submitted when all the information requirements are complied with. A fee for such application shall be paid to the city at the time the application is submitted in accordance with the fee schedule adopted by ordinance.
- (c) *Technical reports.*
- (1) The zoning administrator shall process all landfill permit applications. Such applications for less than 100 cubic yards shall be forwarded to the building official.
 - (2) Such applications for 100 cubic yards or more shall be forwarded to the city engineer and building official. Where watersheds and shoreline are in question, other affected agencies shall also be contacted. These technical advisors shall be instructed by the zoning administrator to prepare reports for the council.
 - (3) Filing fees in excess of the actual incurred expenses shall be refunded to the applicant. When the expenses incurred in the review of the application exceed the fee, such excess expenses shall be billed to the applicant.
- (d) *Issuance of permit.*
- (1) The building official shall determine as to whether, and when, and under what conditions a landfill permit for less than 100 cubic yards shall be issued.
 - (2) Upon receiving information and reports from the zoning administrator and the city engineer, the council shall make its determination as to whether, and when, and under what conditions such permit for a landfill 100 cubic yards or more is to be issued to the applicant by the zoning administrator.
- (e) *Conditions of operation.*
- (1) Under no circumstances shall any such landfill operation be conducted or permitted if the contents of the landfill or any part thereof shall consist of garbage, animal or vegetable refuse, poisons, contaminants, chemicals, decayed material, filth, sewage or similar septic or biologically dangerous material, or any other material deemed to be unsuitable by the city authorities.
 - (2) Unless extended by conditional use permit, the hours of operation shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.
- (f) *Bonding.* The building official or the council may require either the applicant or the owner or user of the property on which the landfill is occurring to post a bond in such form and sum as the building official shall determine, with sufficient surety provided to the city, conditioned to pay to the city the extraordinary cost and expense of repairing, from time to time, any highways, streets or other public ways where such repair work is made necessary by the special burden resulting from hauling and travel in transporting fill material, the amount of such cost and expense to be determined by the city engineer; and, conditioned further, to comply with all requirements of this chapter, and the particular permit, and to pay any expense the city may incur by reason of doing anything required to be done by any applicant to whom a permit is issued.
- (g) *Failure to comply.* The council may, for failure of any person to comply with any requirement made of him in writing under the provisions of such permit, as promptly as same can reasonably be done, proceed to cause the requirement to be complied with, and the cost of such work shall be taxed against the property whereon the landfill is located, or the city may at its option proceed to collect such costs by an action against the person to whom such permit has been issued, and his superiors if a bond exists. In the event that landfilling operations requiring a permit are commenced prior to city review and approval, the city may require work

stopped and all necessary applications filed and processed. Application fees shall be double the normal charge.

(h) *Completion of operation.*

(1) All landfill operations shall be completed within 90 days of the issuance of the permit. Upon completion the permit holder shall notify the building official in writing of the date of completion. If additional time beyond the 90 days is needed for completion, the permit holder may apply to the city and upon a satisfactory showing of need, the council may grant an extension of time. If such extension is granted, it shall be for a definite period and the zoning administrator shall issue an extension permit. Extensions shall not be granted in cases where the permit holder fails to show that good faith efforts were made to complete the landfill operation within 90 days and that failure to complete the operation was due to circumstances beyond the permit holder's control, such as shortage of fill material, teamster's strike, unusually inclement weather, illness or other such valid and reasonable excuse for non-completion. In the event a request for an extension is denied, the permit holder shall be allowed a reasonable time to comply with the other provisions of this section relating to grading, leveling and seeding or sodding. What constitutes such reasonable time shall be determined by the city engineer after inspecting the premises.

(2) At the completion of a landfill operation, the premises shall be graded, leveled, and seeded or sodded with grass. The grade shall be such elevation with reference to any abutting street or public way as the city engineer shall prescribe in the permit. The site shall also conform to such prerequisites as the city engineer may determine with reference to stormwater drainage runoff and stormwater passage or flowage so that the landfill cannot become a source of, or an aggravation to, stormwater drainage conditions in the area. The city engineer shall inspect the project following completion to determine if the applicant has complied with the conditions required of him. Failure of such compliance shall result in the withholding of any building permits for the site and notice of such withholding shall be filed in the office of the county Recorder for the purpose of putting subsequent purchasers on notice.

(i) *Landfills in progress.* All landfill operations for which a permit has previously been issued shall terminate such operations on the date specified by the permit.

(Code 1985, § 11.24)

Secs. 50-573—50-592. Reserved.

ARTICLE XII. AIRPORT ZONING

Sec. 50-593. State law applicable.

Airport development and operation as well as applicable surrounding and adjacent development and use shall be regulated subject to M.S.A. ch. 360.

(Code 1985, § 11.27)

Sec. 50-594. Purpose and authority.

The Buffalo Municipal Airport Joint Airport Zoning Board, created and established by joint action of the city council and the county board of commissioners, pursuant to the provisions and authority of M.S.A. § 360.063, finds and declares that:

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- (1) An airport hazard endangers the lives and property of users of the Buffalo Municipal Airport, and property or occupants of land in its vicinity; and also if of the obstructive type, in effect reduces the size of the area available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein.
 - (2) The creation or establishment of an airport hazard is a public nuisance and an injury to the region served by the Buffalo Municipal Airport.
 - (3) For the protection of the public health, safety, order, convenience, prosperity, and general welfare, and for the promotion of the most appropriate use of land, it is necessary to prevent the creation or establishment of airport hazards.
 - (4) The prevention of these airport hazards should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.
 - (5) The prevention of the creation or establishment of airport hazards, and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds.
 - (6) The Buffalo Municipal Airport is an essential public facility that serves an important public transportation role and provides a public good.

(Ord. of 10-5-2010, § I)

Sec. 50-595. Air space obstruction zoning.

- (a) *Air space zones.* In order to carry out the purpose of this article, as set forth in section 50-594, the following air space zones are established: primary zone, horizontal zone, conical zone, approach zone, precision instrument approach zone, and transitional zone. The locations and dimensions of such zones are as follows:
 - (1) *Primary zone.* All that land which lies directly under an imaginary primary surface longitudinally centered on a runway and extending 200 feet beyond each end of runway 18-36. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is 500 feet for runway 18-36.
 - (2) *Horizontal zone.* All that land which lies directly under an imaginary horizontal surface 150 feet above the established airport elevation, or a height of 1,118 feet above mean sea level, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is 5,000 feet for runway 18-36.
 - (3) *Conical zone.* All that land which lies directly under an imaginary conical surface extending upward and outward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet as measured outward from the periphery of the horizontal surface.
 - (4) *Approach zone.* All that land which lies directly under an imaginary approach surface longitudinally centered on the extended centerline at each end of a runway. The inner edge of the approach surface is at the same width and elevation as, and coincides with, the end of the primary surface. The approach surface inclines upward and outward at a slope of 40:1 for runway 18-36. The approach surface expands uniformly to a width of 3,500 feet for runway 18-36 at a distance of 10,000 feet.
 - (5) *Transitional zone.* All that land which lies directly under an imaginary surface extending upward and outward at right angles to the runway centerline and centerline extended at a slope of 7:1 from the sides of the primary surfaces and from the sides of the approach surfaces until they intersect the horizontal surface or the conical surface. Transitional surfaces for those portions of the precision

instrument approach surface which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the precision instrument approach surface and at right angles to the extended precision instrument runway centerline.

- (b) *Height restrictions.* Except as otherwise provided in this article, and except as necessary and incidental to airport operations, no structure or tree shall be constructed, altered, maintained, or allowed to grow in any air space zone, created in subsection (a) of this section, so as to project above any of the imaginary air space surfaces described in subsection (a) of this section. Where an area is covered by more than one height limitation, the more restrictive limitation shall prevail.
- (c) *Boundary limitations.* The air space obstruction height zoning restrictions set forth in this section shall apply for a distance not to exceed 1½ miles beyond the perimeter of the airport boundary and in that portion of an airport hazard area under the approach zone for a distance not exceeding two miles from the airport boundary.

(Ord. of 10-5-2010, § IV)

Sec. 50-596. Land use safety zoning.

- (a) *Safety zone boundaries.* In order to carry out the purpose of this article, as set forth in section 50-594, to restrict those uses which may be hazardous to the operational safety of aircraft operating to and from the Buffalo Municipal Airport, and, furthermore, to limit population and building density in the runway approach areas, thereby creating sufficient open space to protect life and property in case of an accident, the following land use safety zones are created and established:
 - (1) *Safety zone A.* All land in that portion of the approach zones of a runway, as defined in section 50-595(a)(4), which extends outward from the end of the primary surface a distance equal to two-thirds of the planned length of the runway, which distance shall be 2,134 feet for runway 18-36.
 - (2) *Safety zone B.* All land in that portion of the approach zones of a runway, as defined in section 50-595(a)(4), which extends outward from safety zone A distance equal to one- third of the planned length of the runway, which distance shall be 1,066 feet for runway 18-36.
 - (3) *Safety zone C.* All land which is enclosed within the perimeter of the horizontal zone, as defined in section 50-595(a)(2), and which is not included in safety zone A or safety zone B.
 - (4) *Exceptions; established residential neighborhoods.* There are no areas designated as established residential neighborhoods in built up urban areas based upon the status of development existing on January 1, 1978.
- (b) *Use restrictions.*
 - (1) *General.* Subject at all times to the height restrictions set forth in section 50-595(b), no use shall be made of any land in any of the safety zones defined in subsection (a) of this section which creates or causes interference with the operations of radio or electronic facilities on the airport or with radio or electronic communications between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other lights, results in glare in the eyes of pilots using the airport, impairs visibility in the vicinity of the airport, or otherwise endangers the landing, taking off, or maneuvering of aircraft.
 - (2) *Zone A.* Subject at all times to the height restrictions set forth in section 50-595(b) and to the general restrictions contained in subsection (b)(1) of this section, areas designated as Zone A shall contain no buildings, temporary structures, exposed transmission lines, or other similar aboveground land use structural hazards and shall be restricted to those uses which will not create, attract, or bring together an assembly of persons thereon. Permitted uses may include, but are not limited to, such uses as

agriculture (seasonal crops), horticulture, animal husbandry, raising of livestock, wildlife habitat, light outdoor recreation (non-spectator), cemeteries, and automobile parking.

- (3) *Zone B.* Subject at all times to the height restrictions set forth in section 50-595(b), and to the general restrictions contained in subsection (b)(1) of this section, areas designated as Zone B shall be restricted in use as follows:
- Each use shall be on a site whose area shall not be less than three acres.
 - Each use shall not create, attract, or bring together a site population that would exceed 15 times that of the site acreage.
 - Each site shall have no more than one building plot upon which any number of structures may be erected.
 - A building plot shall be a single, uniform, and non-contrived area, whose shape is uncomplicated and whose area shall not exceed the following minimum ratios with respect to the total site area:

Minimum Ratios For Building Plat

| <i>Site Area</i> | | | | |
|-----------------------------|--------------------------------------|--|--|---|
| <i>At Least (Acres)</i> | <i>But Less Than (Acres)</i> | <i>Ratio of Building Site Area to Building Plot Area</i> | <i>Max. Site Plot Area (sq. ft.)</i> | <i>Population (15 Persons/Acre)</i> |
| 3 | 4 | 12:1 | 10,900 | 45 |
| 4 | 6 | 10:1 | 17,400 | 60 |
| 6 | 10 | 8:1 | 32,600 | 90 |
| 10 | 20 | 6:1 | 72,500 | 150 |
| 20 | and up | 4:1 | 218,000 | 300 |

- The following uses are specifically prohibited in Zone B: churches, hospitals, schools, theaters, stadiums, hotels, motels, trailer courts, campgrounds, and other places of frequent public or semi-public assembly.
- (4) *Zone C.* Zone C is subject only to height restrictions set forth in section 50-595(b), and to the general restrictions contained in subsection (b)(1) of this section.
- (5) *Exemptions, established residential neighborhoods.* There are no areas designated as established residential neighborhoods in built up urban areas based upon the status of development existing on January 1, 1978.
- (c) *Boundary limitations.* The land use zoning restrictions set forth in this section shall apply for a distance not to exceed one mile beyond the perimeter of the airport boundary and in that portion of an airport hazard area under the approach zone for a distance not exceeding two miles from the airport boundary.
- (d) *Boundary assurances.* A certified survey prepared by a licensed land surveyor shall be required to be submitted with a building permit application for properties that are entirely or partially contained within land use safety zones A and B, unless the zoning administrator determines the proposed building site is clearly outside the safety zones. For any location within the air space jurisdiction of this article, the zoning administrator may require a survey that shows the elevation of a proposed structure will conform to the air space requirements of this article.

(Ord. of 10-5-2010, § V)

Sec. 50-597. Airport map.

The several zones herein established are shown in Exhibit 1 - Land Use Safety Zones Map, Exhibit 2 - Known Variance and Non-Conformity Locations, Exhibit 2.1 - Known Vegetation Non-Conformity Locations with 1974 Ordinance, Exhibit 3 - Air Space Map, Exhibit 3.1 — Runway 36 Approach Restrictions, and Exhibit 3.2 — Runway 18 Approach Restrictions and have been prepared by Bolton and Menk, Inc., and dated October 5, 2010. The exhibits, on file in the office of the city clerk, are made a part hereof, which together with such amendments thereto as may from time to time be made, and all notations, references, elevations, data, zone boundaries, and other information thereon, shall be and the same is adopted as part of this article.

(Ord. of 10-5-2010, § VI)

Sec. 50-598. Nonconforming uses; regulations not retroactive.

The regulations prescribed by this article shall not be construed to require the removal, lowering or other changes or alteration of any existing structure or tree which are in conformity with the 1974 airport zoning ordinance, but which do not conform to the regulations in this article, or otherwise interfere with the continuance of any preexisting legal nonconforming use. The regulations prescribed by this article shall not be construed to require the removal, lowering, or other changes or alteration of any structure or tree not conforming to the regulations as of the effective date of the ordinance from which this article is derived, or otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of the ordinance from which this article is derived and is diligently prosecuted and completed within two years thereof.

(Ord. of 10-5-2010, § VII)

Sec. 50-599. Permits.

(a) *Future uses.*

- (1) Except as specifically provided in subsections (a)(2) and (3) of this section, no material change shall be made in the use of land and no structure shall be erected, altered, or otherwise established in any zone created unless a permit therefore shall have been applied for and granted by the zoning administrator, hereinafter, provided for. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted.
- (2) However, a permit for a tree or structure of less than 75 feet of vertical height above the ground shall not be required in the horizontal and conical zones or in any approach and transitional zones beyond a horizontal distance of 4,200 feet from each end of the runway except when such tree or structure, because of terrain, land contour, or topographic features, would extend the height or land use limit prescribed for the respective zone.
- (3) Nothing contained in this foregoing exception shall be construed as permitting or intending to permit any construction, alteration, or growth of any structure or tree in excess of any of the height limitations established by this article as set forth in section 50-595 and the land use limitations set forth in section 50-596.

- (b) *Existing uses.* Before any existing use or structure may be replaced, substantially altered or repaired, or rebuilt within any zone established herein, a permit must be secured authorizing such replacement, change, or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or

permit a preexisting legal nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of the article from which this section is derived or any amendments thereto, or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

(c) *Nonconforming uses abandoned or destroyed.*

- (1) Whenever the zoning administrator determines that a nonconforming structure or tree has been abandoned or more than 80 percent torn down, deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations. Whether application is made for a permit under this subsection or not, the zoning administrator may order the owner of the abandoned or partially destroyed nonconforming structure, at his own expense, to lower, remove, reconstruct, or equip the same in the manner necessary to conform to the provisions of this article. In the event the owner of the nonconforming structure shall neglect or refuse to comply with such order for ten days after receipt of written notice of such order, the zoning administrator may, by appropriate legal action, proceed to have the abandoned or partially destroyed nonconforming structure lowered, removed, reconstructed, or equipped and assess the cost and expense thereof against the land on which the structure is or was located.
- (2) Unless such an assessment is paid within 90 days from the service of notice thereof on the owner of the land, the sum shall bear interest at the rate of eight percent per annum from the date the cost and expense is incurred until paid and shall be collected in the same manner as are general taxes.

(d) *Abatement of existing uses not in compliance with 1974 airport zoning ordinance.* Uses, structures or trees in existence upon the passage of this article, which were subject to the 1974 airport zoning ordinance which have fallen into noncompliance with the requirements of the 1974 airport zoning ordinance, shall remain subject to, shall be brought into compliance with and shall be kept in compliance with the 1974 airport zoning ordinance requirements, unless the requirements of this article are otherwise less restrictive. Such uses, structures and trees shall not be considered preexisting legal nonconformities because of the nonconformity did not precede the 1974 airport zoning ordinance. The zoning administrator may use the procedures outlined in subsection (c) of this section to bring such properties into conformity.

(Ord. of 10-5-2010, § VII)

Sec. 50-600. Variances.

- (a) Any person desiring to erect or increase the height of any structure, permit the growth of any tree, or use his property not in accordance with the regulations prescribed in this article may apply to the board of adjustment and appeals, hereinafter provided for, for a variance from such regulations.
- (b) If the board of adjustment and appeals fails to grant or deny the variance within the timeframe established within M.S.A. § 15.99, the variance shall be deemed to be granted by the board. When the variance is granted by reason of the failure of the board of adjustment and appeals to act on the variance, the person receiving the variance shall notify the zoning administrator and the state department of transportation, by certified mail, that the variance has been granted. The applicant shall include a copy of the original application for the variance with this notice to the state department of transportation.
- (c) The variance shall be effective 60 days after this notice is received by the zoning administrator and state department of transportation subject to any action taken by the state department of transportation pursuant to state law M.S.A. § 360.063.
- (d) Variances shall be allowed where it is duly found that a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship, and relief granted would not be contrary to the

public interest but do substantial justice and be in accordance with the spirit of this article, provided any variance so allowed may be subject to any reasonable conditions that the board or state department of transportation may deem necessary to effectuate the purpose of this article.

- (e) The zoning administrator shall forward the request to the state department of transportation office of aeronautics for review and comment prior to consideration of the request by the board of adjustment and appeals. If the request is located within county's jurisdiction, the request shall also be sent to the city's zoning administrator.

(Ord. of 10-5-2010, § IX)

Sec. 50-601. Hazard marking and lighting.

- (a) *Nonconforming uses.* The owner of any nonconforming structure or tree is required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the zoning administrator, to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazards. Such markers and lights shall be installed, operated, and maintained at the expense of the Buffalo Municipal Airport.
- (b) *Permits and variances.* Any permit or variance deemed advisable to effectuate the purpose of this article and be reasonable in the circumstances, and granted by the zoning administrator or board, shall require the owner of the structure or tree in question, at his own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to pilots the presence of an airport hazard.

(Ord. of 10-5-2010, § X)

Sec. 50-602. Airport zoning administrators.

It shall be the duty of the city and county zoning administrators to administer and enforce the regulations prescribed herein, based on the area they have land use authority. Applications for permits, variances, and appeals shall be made to the appropriate jurisdiction's zoning administrator upon a form furnished by them. Permit applications shall be promptly considered and granted or denied by them in accordance with the regulations prescribed herein or as provided for within M.S.A. § 15.99. Variance applications shall be forthwith transmitted by the appropriate jurisdiction's zoning administrator to the board of adjustment and appeals for action as hereinafter provided for.

(Ord. of 10-5-2010, § XI)

Sec. 50-603. Procedure for review by board of adjustment and appeals.

- (a) A request for a variance or an appeal to the zoning administrator's ruling shall be filed with the zoning administrator. The zoning administrator shall forward the request to the state department of transportation office of aeronautics for review and comment prior to consideration of the request by the board of adjustment and appeals. The county zoning administrator shall also forward the request to the city zoning administrator for review and comment prior to consideration of the request by the board of adjustment and appeals.
- (b) Rules governing the board of adjustment and appeals shall be consistent with those established by the body serving as the board of adjustment and appeals and the provisions of this article. Meetings of the board of adjustment and appeals shall be held at the call of the zoning administrator or chairperson and at such other times as the board of adjustment and appeals may determine. The chairperson, or in his absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All hearings of the board of

adjustment and appeals shall be public. The board of adjustment and appeals shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the respective zoning administrator, city zoning administrator (if variance or appeal is within the unincorporated area), and county recorder's office and shall be a public record.

- (c) The board of adjustment and appeals shall make written findings of facts and conclusions of law (e.g., minutes or resolution/order) giving the facts upon which it acted and its legal conclusions from such facts in reversing, affirming, or modifying any order, requirement, decision, or determination which comes before it under the provisions of this article.
- (d) The concurring vote of a majority of the members of the board of adjustment and appeals shall be sufficient to reverse any order, requirement, decision, or determination of the zoning administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this article, or to affect any variation in this article.

(Ord. of 10-5-2010, § XII(C))

Sec. 50-604. Appeals process.

- (a) Any person aggrieved, or any taxpayer affected by any decision of the zoning administrator made in his administration of this article, may appeal to the board of adjustment and appeals. Such appeals may also be made by any governing body of a municipality, county, or airport zoning board, which is of the opinion that a decision of the zoning administrator is an improper application of this article as it concerns such governing body or board.
- (b) All appeals hereunder must be commenced within 30 days of the zoning administrator's decision, by filing with the zoning administrator a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken. In addition, any person aggrieved, or any taxpayer affected by any decisions of the zoning administrator made in his administration of this article who desires to appeal such decision, shall submit an application for a variance to the zoning administrator in the manner set forth in M.S.A. § 360.068(2).
- (c) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the board of adjustment and appeals after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the board of adjustment and appeals on notice to the zoning administrator and on due cause shown.
- (d) The board of adjustment and appeals shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person, by agent, or by attorney.
- (e) The board of adjustment and appeals may, in conformity with the provisions of this article, reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination, as may be appropriate under the circumstances, and to that end shall have all the powers of the zoning administrator.

(Ord. of 10-5-2010, § XIII)

Sec. 50-605. Judicial review.

Any person aggrieved, or any taxpayer affected by any decision of the board of adjustment and appeals, or any governing body of a municipality, county, or airport zoning board, which is of the opinion that a decision of the board of adjustment and appeals is illegal, may present to the county district court a verified petition setting forth that the decision or action is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the board of adjustment and appeals. The petitioner must exhaust the remedies provided in this article before availing himself of the right to petition a court as provided by this section.

(Ord. of 10-5-2010, § XIV)

Sec. 50-606. Penalties.

Every person who shall construct, establish, substantially change, alter or repair any existing structure or use, or permit the growth of any tree without having complied with the provision of this article or who, having been granted a permit or variance under the provisions of this article, shall construct, establish, substantially change or substantially alter or repair any existing growth or structure or permit the growth of any tree, except as permitted by such permit or variance, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.00 or imprisonment for not more than 90 days or by both. Each day a violation continues to exist shall constitute a separate offense. The airport zoning administrator may enforce all provisions of this article through such proceedings for injustice relief and other relief as may be proper under M.S.A. § 360.073 and other applicable law.

(Ord. of 10-5-2010, § XV)

Secs. 50-607—50-630. Reserved.***ARTICLE XIII. ADMINISTRATION AND ENFORCEMENT******DIVISION 1. GENERALLY*****Sec. 50-631. Authority of zoning administrator.**

This chapter shall be administered and enforced by the zoning administrator who is appointed by the council. The zoning administrator may institute in the name of the city any appropriate actions or proceedings against a violator as provided by statute or provisions of this Code.

(Code 1985, § 11.90)

Sec. 50-632. Violation a misdemeanor.

Every person violates a section, subdivision, paragraph or provision of this chapter when he performs an act thereby prohibited or declared unlawful or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof.

(Code 1985, § 11.99)

Sec. 50-633. Appeals.

- (a) *City council serves as board of adjustment and appeals; vote required.* The council shall serve as the board of adjustment and appeals. A majority vote of four-fifths of the full board of adjustments and appeals shall be required to reverse any decision of an administrative officer in the interpretation of this chapter.
- (b) *Procedure.* An appeal from the ruling of an administrative officer of the city may be made by the proper owner or his agent within 30 days after the making of the order appealed from by filing with the zoning administrator a notice of appeal stating the specific grounds upon which the appeal is made. The board of adjustment and appeals shall make its decision by resolution within 60 days. A copy of the resolution shall be mailed to the applicant by the zoning administrator.
- (c) *Decisions final; judicial appeal.* All decisions by the board of adjustment and appeals shall be final except that an aggrieved person shall have the right to appeal within 30 days of the decision with the county district court.

(Code 1985, § 11.09)

Secs. 50-634—50-654. Reserved.

DIVISION 2. AMENDMENTS

Sec. 50-655. Initiate an amendment.

The council or planning commission may, upon their own motion, initiate a request to amend the text or the district boundaries of this chapter. Any person, owning real estate within the city may initiate a request to amend the district boundaries or text of this chapter so as to affect the real estate.

(Code 1985, § 11.06(2))

Sec. 50-656. Application.

- (a) Request for amendments to the zoning ordinance or zoning map shall be filed with the zoning administrator on an official application form. The application shall be accompanied by a fee in the amount provided in the city fee schedule.
- (b) The application shall also be accompanied by five copies of detailed written and graphic materials fully explaining the proposed change, development, or use and a list of property owners located within 350 feet of the subject property obtained from and certified by a county or city official. The city may, at its discretion, provide this list and may require a different method of submission, such as electronic submission.
- (c) The request for amendment shall be placed on the agenda of the first possible planning commission meeting occurring after ten days following the date of submission of the application and public hearing publication. The request shall be considered as being officially submitted when all the information requirements are complied with. The city may, at its discretion, place one or more signs on the subject property notifying the public of the pending land use action.

(Code 1985, § 11.06(1)(A))

Sec. 50-657. Technical analysis.

The zoning administrator shall instruct the appropriate staff persons to prepare technical reports where appropriate and provide general assistance in preparing a recommendation on the action of the council.

(Code 1985, § 11.06(1)(C))

Sec. 50-658. Notice of hearing before planning commission.

- (a) Upon receipt of the application, the city clerk shall set a public hearing following proper hearing notification. The planning commission shall conduct the hearing and report its findings and make recommendations to the council.
- (b) Notice of the hearing shall consist of a legal property description, description of request, and be published in the official newspaper at least ten days prior to the hearing and written notification of the hearing shall be mailed at least ten days prior to all owners of land within 350 feet of the boundary of the property in question or as required by state law. Notice will not be mailed for amendments to the text of the zoning ordinance, and the city may choose not to mail notice for amendments to zoning map when the proposed amendment affects an area of more than five acres. Failure of a property owner to receive the notice shall not invalidate any such proceedings as set forth in this division.

(Code 1985, § 11.06(1)(B))

Sec. 50-659. Evaluation criteria.

The planning commission shall consider possible adverse effects of the proposed amendment. Its judgment shall be based upon, but not limited to, the following factors:

- (1) The proposed action has been considered in relation to the specific policies and provisions of and has been found to be consistent with the official comprehensive plan.
- (2) The proposed use is or will be compatible with present and future land uses of the area.
- (3) The proposed use conforms with all performance standards contained herein.
- (4) The proposed use will not tend to or actually depreciate the property values in the area in which it is proposed.
- (5) The proposed use can be accommodated with existing public services and will not overburden the city's service capacity.
- (6) Traffic generation by the proposed use within the capabilities of streets serving the property.

(Code 1985, § 11.06(1)(D))

Sec. 50-660. City may request additional information.

The planning commission and city staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, the information to be declared necessary to establish performance conditions in relation to all pertinent sections of this chapter.

(Code 1985, § 11.06(1)(E))

Sec. 50-661. Public hearing attendance.

The applicant or representative thereof shall appear before the planning commission in order to answer questions concerning the proposed request.

(Code 1985, § 11.06(1)(F))

Sec. 50-662. Planning commission recommendation to city council.

The planning commission may recommend approval or denial of the request. The recommendation shall be accompanied by the report and recommendation of the city staff. In the event the planning commission cannot agree on a recommendation, the commission may choose to pass the item on to the council with no recommendation.

(Code 1985, § 11.06(1)(G))

Sec. 50-663. Council referral.

The council shall not act upon an amendment until it has received a report and recommendation from the planning commission and the city staff or until 60 days after the first regular planning commission meeting at which the request was considered, whichever comes first. However, the council may take up consideration of the application without planning commission action if the statutory period for a decision as specified in M.S.A. § 15.99 will expire prior to the opportunity for further review.

(Code 1985, § 11.06(1)(H))

Sec. 50-664. Council review; optional public hearing.

Upon receiving the report and recommendation of the planning commission and the city staff, the council shall place the report and recommendation on the agenda for the next regular meeting. The reports and recommendations shall be entered in and made part of the permanent written record of the council meeting. Upon receiving the report and recommendation of the planning commission and the city staff, the council shall have the option to set and hold a public hearing if deemed necessary.

(Code 1985, § 11.06(1)(I), (J))

Sec. 50-665. Referral to planning commission reconsideration.

If, upon receiving the reports and recommendations of the planning commission and city staff, the council finds that specific inconsistencies exist in the review process and thus the final recommendation of the council will differ from that of the planning commission, the council may, before taking final action, refer the matter back to the planning commission for further consideration. The council shall provide the planning commission with a written statement detailing the specific reasons for referral. This procedure shall be followed only one time on a singular action.

(Code 1985, § 11.06(1)(K))

Sec. 50-666. Council approval; processing of amendment.

- (a) Approval of a proposed amendment to the zoning map when such amendment has the effect of rezoning property from a residential district to a commercial or industrial district shall require passage by a four-fifths vote of the entire council. For all other amendments, whether to the zoning map or zoning ordinance text, approval shall require a simple majority of council.
- (b) The amendment shall not become effective until such time as the council approves an ordinance reflecting the amendment and after the ordinance is published in the official newspaper.

(Code 1985, § 11.06(1)(L), (M))

Sec. 50-667. Reapplication after denial subject to waiting period.

Whenever an application for an amendment has been considered and denied by the council, a similar application for the amendment affecting substantially the same property shall not be considered again by the planning commission or council for at least six months from the date of its denial; unless a decision to reconsider such matter is made by not less than four-fifths vote of the full council.

(Code 1985, § 11.06(1)(N))

Sec. 50-668. Judicial appeal.

All decisions by the council involving amendments shall be final, except that an aggrieved person shall have the right to appeal within 30 days of the decision to the county district court.

(Code 1985, § 11.06(3))

Secs. 50-669—50-694. Reserved.

DIVISION 3. CONDITIONAL USE PERMITS

Sec. 50-695. Purpose and intent; general considerations.

- (a) The purpose of a conditional use permit is to provide the city with a reasonable degree of discretion in determining the suitability of certain designated uses upon the general welfare, public health and safety.
- (b) In making a determination as to whether the conditional use is to be allowed, the city may consider the nature of the adjoining land or buildings, the effect upon traffic into or from the premises, or on any adjoining roads, and all other or further factors as the city shall deem a prerequisite of consideration in determining the effect of the use on the general welfare, public health and safety.

(Code 1985, § 11.07(1))

Sec. 50-696. Application.

- (a) Request for conditional use permit shall be filed with the zoning administrator on an official application form. The application shall be accompanied by a fee in the amount provided in the city fee schedule.

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- (b) The application shall also be accompanied by five copies of detailed written and graphic materials fully explaining the proposed change, development, or use and a list of property owners located within 350 feet of the subject property obtained from and certified by a county or city official. The city may, at its discretion, provide this list. The city may require a different method of submission, such as electronic submission.
 - (c) The request for conditional use permit shall be placed on the agenda of the first possible planning commission meeting occurring after ten days following the date of submission of the application and public hearing publication. The request shall be considered as being officially submitted when all the information requirements are complied with. The city may, at its discretion, place one or more signs on the subject property notifying the public of the pending land use action.
 - (d) Applications for conditional use permit applications generally include the following items, which shall be submitted when requested by the city:
 - (1) Site development plan.
 - a. Location of all buildings on lots, including both existing and proposed structures.
 - b. Location of all adjacent buildings located within 350 feet of the exterior boundaries of the property in question.
 - c. Location and number of existing and proposed parking spaces.
 - d. Vehicular circulation.
 - e. Architectural elevations (type and materials used in all external surface).
 - f. Location and type of all proposed lights.
 - g. Curb cuts, driveways, number of parking spaces.
 - (2) Dimension plan.
 - a. Lot dimensions and area.
 - b. Dimensions of proposed and existing structures.
 - c. "Typical" floor plan and "typical" room plan.
 - d. Setbacks of all buildings located on property in question.
 - e. Proposed setbacks.
 - f. Sanitary sewer and water plan with estimated use per day.
 - (3) Grading plan.
 - a. Existing contour, wetlands, and other natural features.
 - b. Proposed grading elevations.
 - c. Drainage configuration, including existing and proposed impervious surfaces.
 - d. Storm sewers catchbasins and invert elevations.
 - e. Spot elevations.
 - f. Proposed road profile.
 - (4) Landscape plan.
 - a. Location of all existing trees, type, diameter, crown cover, and which trees will be removed.
 - b. Location, type and diameter of all proposed plantings.

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- c. Location and material used of all screening devices.
 - (5) Legal description of property under consideration.
 - (6) Proof of ownership of the land for which a conditional use permit is requested.

(Code 1985, § 11.07(2)(A), (3))

Sec. 50-697. Technical analysis.

The zoning administrator shall instruct the appropriate staff persons to prepare technical reports where appropriate and provide general assistance in preparing a recommendation on the action of the council.

(Code 1985, § 11.07(2)(C))

Sec. 50-698. Notice of hearing before planning commission.

- (a) Upon receipt of the application, the city clerk shall set a public hearing following proper hearing notification. The planning commission shall conduct the hearing and report its findings and make recommendations to the council.
- (b) Notice of the hearing shall consist of a legal property description, description of request, and be published in the official newspaper at least ten days prior to the hearing and written notification of the hearing shall be mailed at least ten days prior to all owners of land within 350 feet of the boundary of the property in question or as required by state law. Notice will not be mailed for conditional use permits to the text of the zoning ordinance, and the city may choose not to mail notice for conditional use permits to zoning map when the proposed conditional use permit affects an area of more than five acres. Failure of a property owner to receive the notice shall not invalidate any such proceedings as set forth in this chapter.

(Code 1985, § 11.07(2)(B))

Sec. 50-699. Evaluation criteria.

The planning commission shall consider possible adverse effects of the proposed conditional use permit. Its judgment shall be based upon, but not limited to, the following factors:

- (1) The proposed action has been considered in relation to the specific policies and provisions of and has been found to be consistent with the official comprehensive plan.
- (2) The proposed use is or will be compatible with present and future land uses of the area.
- (3) The proposed use conforms with all performance standards contained herein.
- (4) The proposed use will not tend to or actually depreciate the property values in the area in which it is proposed.
- (5) The proposed use can be accommodated with existing public services and will not overburden the city's service capacity.
- (6) Traffic generation by the proposed use within the capabilities of streets serving the property.

(Code 1985, § 11.07(2)(D))

Sec. 50-700. City may request additional information.

The planning commission and city staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, the information to be declared necessary to establish performance conditions in relation to all pertinent sections of this chapter.

(Code 1985, § 11.07(2)(E))

Sec. 50-701. Public hearing attendance.

The applicant or representative thereof shall appear before the planning commission in order to answer questions concerning the proposed request.

(Code 1985, § 11.07(2)(F))

Sec. 50-702. Planning commission recommendation to city council.

Upon making a recommendation, the planning commission shall make a finding of fact and recommend such actions or conditions relating to the request as it deems necessary to carry out the intent and purpose of this chapter. The recommendation shall be in writing and accompanied by the report and recommendation of the city staff. In the event the planning commission cannot agree on a recommendation, the commission may choose to pass the item on to the council with no recommendation.

(Code 1985, § 11.07(2)(G))

Sec. 50-703. Council referral.

The council shall not act upon a conditional use permit until it has received a report and recommendation from the planning commission and the city staff or until 60 days after the first regular planning commission meeting at which the request was considered, whichever comes first. However, the council may take up consideration of the application without planning commission action if the statutory period for a decision as specified in M.S.A. § 15.99 will expire prior to the opportunity for further review.

(Code 1985, § 11.07(2)(H))

Sec. 50-704. Council review; optional public hearing.

Upon receiving the report and recommendation of the planning commission and the city staff, the council shall place the report and recommendation on the agenda for the next regular meeting. The reports and recommendations shall be entered in and made part of the permanent written record of the council meeting. Upon receiving the report and recommendation of the planning commission and the city staff, the council shall have the option to set and hold a public hearing if deemed necessary.

(Code 1985, § 11.07(2)(I), (J))

Sec. 50-705. Referral to planning commission reconsideration.

If, upon receiving the reports and recommendations of the planning commission and city staff, the council finds that specific inconsistencies exist in the review process and thus the final recommendation of the council will differ from that of the planning commission, the council may, before taking final action, refer the matter back to the planning commission for further consideration. The council shall provide the planning commission with a written statement detailing the specific reasons for referral. This procedure shall be followed only one time on a singular action.

(Code 1985, § 11.07(2)(K))

Sec. 50-706. Council approval; permit processing.

- (a) Approval of a proposed conditional use permit to the zoning map when such conditional use permit has the effect of rezoning property from a residential district to a commercial or industrial district shall require passage by a four-fifths vote of the entire council. For all other conditional use permits, whether to the zoning map or this chapter, approval shall require a simple majority of council.
- (b) The conditional use permit shall not become effective until such time as the council approves an ordinance reflecting the conditional use permit and after the ordinance is published in the official newspaper.

(Code 1985, § 11.07(2)(L))

Sec. 50-707. Reapplication after denial subject to waiting period.

Whenever an application for a conditional use permit has been considered and denied by the council, a similar application for the conditional use permit affecting substantially the same property shall not be considered again by the planning commission or council for at least six months from the date of its denial; unless a decision to reconsider such matter is made by not less than four-fifths vote of the full council.

(Code 1985, § 11.07(2)(M))

Sec. 50-708. Performance bond.

- (a) Except in the case of non-income producing residential property, upon approval of a conditional use permit the city shall be provided where deemed necessary by the council with a surety bond, cash escrow, certificate of deposit, securities, cash deposit, letter of credit, or other security acceptable to the city, prior to the issuing of building permits or initiation of work on the proposed improvements or development. The security shall be non-cancellable and shall guarantee conformance and compliance with the conditions of the conditional use permit and provisions of this Code.
- (b) The security shall be in the amount equal to 125 percent of the city engineer's or building official's estimated costs of labor and materials for the proposed improvements or development. The project can be handled in stages upon the discretion of the city engineer and building official.
- (c) The city shall hold the security until completion of the proposed improvements or development and a certificate of occupancy indicating compliance with the conditional use permit and provisions of this Code has been issued by the building official.
- (d) Failure to comply with the conditions of the conditional use permit or provisions of this Code shall result in forfeiture of the security.

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- (e) Whenever a performance guarantee is imposed by the city, the applicant shall be required to enter into a performance agreement with the city. This agreement is to provide authorization to the city to utilize the posted security and complete stipulated work should the applicant fail to meet the terms and conditions of the permit. The agreement shall hold the city harmless for completion of the work and address other matters as may be determined by the city attorney.

(Code 1985, § 11.07(5))

Sec. 50-709. Lapse of conditional use permit by non-use.

- (a) Whenever, within one year after granting a conditional use permit, the use as permitted by the permit shall not have been completed or utilized, then such permit shall become null and void unless a petition for an extension of time in which to complete or utilize the use has been granted by the council.
- (b) The extension shall be requested in writing and filed with the zoning administrator at least 30 days before the expiration of the original conditional use permit. There shall be no charge for the filing of such petition.
- (c) The request for extension shall state facts showing a good faith attempt to complete or utilize the use permitted in the conditional use permit. The petition shall be presented to the planning commission for a recommendation and to the council for a decision.
- (d) A conditional use permit shall become a vested right to use the land according to the terms of the approved permit which shall run with the land and may be utilized by subsequent occupants of the property, except when such permit has lapsed for the one-year period noted herein, in which case, no such use shall be allowed on the property unless the city council approves a new conditional use permit.

(Code 1985, § 11.07(4))

Sec. 50-710. Judicial appeal.

All decisions by the council involving conditional use permits shall be final, except that an aggrieved person shall have the right to appeal within 30 days of the decision to the county district court.

(Code 1985, § 11.07(6))

Secs. 50-711—50-733. Reserved.

DIVISION 4. VARIANCES

Sec. 50-734. Purpose.

The purpose of this division is to provide for variances from the literal provisions of this chapter in instances where their strict enforcement would cause practical difficulties in putting the property to a reasonable use because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. The city council will sit as the board of adjustments and appeals in making decisions of approval or denial of variance applications.

(Code 1985, § 11.08(1)(A))

Sec. 50-735. Application.

- (a) Requests for a variance shall be filed with the zoning administrator on an official application form. The application shall be accompanied by a fee in the amount provided in the city fee schedule.
- (b) The application shall also be accompanied by five copies of detailed written and graphic materials fully explaining the proposed change, development, or use and a list of property owners located within 350 feet of the subject property obtained from and certified by a county or city official. The city may, at its discretion, provide this list. The city may, at its discretion, provide this list and may require a different method of submission, such as electronic submission. The city may at its discretion place one or more signs on the subject property notifying the public of the pending land use action.
- (c) The application for a variance shall set forth reasons that the variance is justified in order to make reasonable use of the land, structure or building.

(Code 1985, § 11.08(1)(B)3, (2)(A)1(a))

Sec. 50-736. City may request additional information.

The planning commission and city staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, the information to be declared necessary to establish performance conditions in relation to all pertinent sections of this chapter.

(Code 1985, § 11.08(2)(A)1(e))

Sec. 50-737. Technical analysis.

The zoning administrator shall instruct the appropriate staff persons to prepare technical reports where appropriate and provide general assistance in preparing a recommendation on the action of the council.

(Code 1985, § 11.08(2)(A)1(d))

Sec. 50-738. Review criteria.

In considering requests for a variance and in taking subsequent action, the city staff, the planning commission and the city council shall make a finding of fact that the proposed action will not:

- (1) Impair an adequate supply of light and air to adjacent property.
- (2) Unreasonably increase the congestion in the public street.
- (3) Increase the danger of fire or endanger the public safety.
- (4) Unreasonably diminish or impair established property values within the neighborhood, or in any way be contrary to the intent of this chapter.
- (5) Violate the intent and purpose of the comprehensive plan.
- (6) Violate any of the terms or conditions of this division.

(Code 1985, § 11.08(1)(B)1)

Sec. 50-739. Requirements for granting.

A variance from the terms of this chapter shall not be granted unless it can be demonstrated that:

- (1) Practical difficulties in putting the property to a reasonable use will result if the variance is denied due to the existence of special conditions and circumstances in putting the property to a reasonable use which are peculiar to the land, structure or building involved.
 - a. Special conditions may include exceptional topographic or water conditions or, in the case of an existing lot or parcel of record, narrowness, shallowness, insufficient area or shape of the property.
 - b. Practical difficulties caused by the special conditions and circumstances may not be solely economic in nature, if a reasonable use of the property exists under the terms of this chapter.
 - c. Special conditions and circumstances causing practical difficulties shall not be a result of lot size or building location when the lot qualifies as a buildable parcel.
- (2) Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter or deny the applicant of the ability to put the property in question to a reasonable use.
- (3) The special conditions and circumstances causing the practical difficulties do not result from the actions of the applicant.
- (4) Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same district.
- (5) The request is not a use variance.
- (6) Variance requested is the minimum variance necessary to accomplish the intended purpose of the applicant and to provide for a reasonable use of the property.

(Code 1985, § 11.08(1)(B)2)

Sec. 50-740. Hearing before planning commission; notice; recommendation.

- (a) The planning commission shall conduct the hearing following proper notification and report its findings and make recommendations to the council. Notice of the hearing shall consist of a legal property description, description of request and street address of property location, and be published in the official newspaper at least ten days prior to the hearing and written notification of the hearing shall be mailed at least ten days prior to all owners of land within 350 feet of the boundary of the property in question.
- (b) Failure of a property owner to receive notice shall not invalidate any such proceedings as set forth within this chapter.
- (c) The applicant or representative thereof shall appear before the planning commission to answer questions concerning the proposed variance.
- (d) The planning commission, based upon a report and recommendation by the city staff, shall have the power to advise and recommend such conditions related to the variance regarding the location, character and other features of the proposed building, structure or use as it may deem advisable in the interest of the intent and purpose of this chapter.

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- (e) The planning commission shall make findings of fact and recommend approval or denial of the request. The planning commission shall reach a decision within 60 days after the first regular meeting at which the variance request was considered by the commission.

(Code 1985, § 11.08(1)(B)4, (2)(A)1(b), (c), (f), (g))

Sec. 50-741. Review by city council; vote required; final determination; appeal.

- (a) The commission's recommendation and the city staff's report shall be presented to the council. However, the council may take up consideration of the application without planning commission action if the period for a decision as specified in M.S.A. § 15.99 will expire prior to the opportunity for further review.
- (b) Should the council find that the conditions required under this division apply to the proposed lot or parcel, the council may grant a variance from the strict application of this chapter so as to relieve such difficulties to the degree considered reasonable, provided such relief may be granted without impairing the intent of this chapter.
- (c) The council shall make findings of fact and approve or deny a request for variance within 30 days after the close of the public hearing on the request. A variance shall be granted by a simple majority vote of the full council, sitting as the board of adjustment and appeals.
- (d) All decisions by the council involving a variance request shall be final except that an aggrieved person shall have the right to appeal within 30 days of the decision to the county district court.

(Code 1985, § 11.08(1)(B)4, (2)(A)1(h)—(j))

Sec. 50-742. Performance bond.

- (a) Upon approval of a variance, the city shall be provided, where deemed necessary by the city, with a surety bond, cash escrow, certificate of deposit, securities, cash deposit, letter of credit, or other security acceptable to the city, prior to the issuing of building permits or initiation of work on the proposed improvements or development. The security shall guarantee conformance and compliance with the conditions of the variance and provisions of this Code.
- (b) The security shall be in the amount equal to 125 percent of the city engineer's or building official's estimated costs of labor and materials for the proposed improvements or development.
- (c) The city shall hold the security until completion of the proposed improvements or development and a certificate of occupancy indicating compliance with the variance and this Code has been issued by the building official.
- (d) Failure to comply with the conditions of the variance or appeal and provisions of this Code shall result in forfeiture of the security.
- (e) Whenever a performance guarantee is imposed by the city, the applicant shall be required to enter into a performance agreement with the city. This agreement is to provide authorization to the city to utilize the posted security and complete stipulated work should the applicant fail to meet the terms and conditions of the permit. The agreement shall hold harmless the city for completion of the work and address other matters as may be determined by the city attorney.

(Code 1985, § 11.08(4))

Sec. 50-743. Effect of variance approval.

Upon approval, a structure utilizing a variance shall be considered a conforming structure, however, any subsequent additional encroachments shall require separate variance approval.

Sec. 50-744. Lapse of variance; extension.

- (a) If within one year after granting a variance the use as permitted by the variance shall not have been completed or utilized, then such a variance shall become null and void unless a petition for an extension of time in which to complete or utilize the use has been granted by the council.
- (b) The extension shall be requested in writing and filed with the zoning administrator at least 30 days before the expiration of the original variance or appeal. There shall be no charge for the filing of such petition.
- (c) The request for extension shall state facts showing a good faith attempt to complete or use the use permitted in the variance or appeal. The petition shall be presented to the council for decision.

(Code 1985, § 11.08(3))

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1985 CODE

This table gives the location within this Code of those sections of the 1985 Code, as supplemented through May 30, 2019, which are included herein. Sections of the 1985 Code, as supplemented, not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of ordinances and other legislation adopted subsequent thereto, see the table immediately following this table.

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